United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7161

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT S. GRANT,

Plaintiff-Appellee,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, AND FRANK C. ARRICALE II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants-Appellants,

IRVING ANKER, CHANCELLOR

Defendant.

On Appeal from an Order and Judgment of the United States District Court for the Southern District of New York.

JOINT APPENDIX

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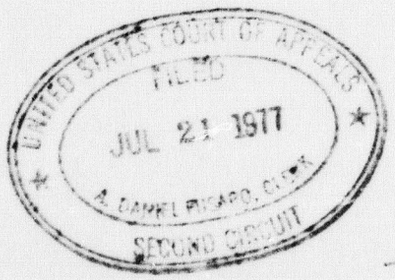

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DOCKET ENTRIES 75 CIVIL 1676

75-1676 Robert Grant vs. Board of Education of the City of N.Y. et al 75 Civil 1

DATE	NR.	PROCEEDINGS
		PAGE 1
04-07-75	1	Filed Petition. no summons issued J.
04-29-75	2	Filed summons & return, served the following: Irving Anker, Chancellor.....4-11-75 unable to serve. Bd. of Education City of N.Y.....4-11-75 unable to serve. Frank C. Arricale 11, Executive Director..4-23-75.
05-15-75	3	Filed ANSWER of defts. WBR
05-23-75	4	Filed pltff's request for an entry of default.
09-18-75	5	Filed pltffs motion for an order for Declaratory and Summary Judgment for Causes of action I, II, IV, V in the above captioned case- etc, as indicated: rtble on 10-2-75 before Pierce, J.
10-2-75	6	Filed Affidavit of Corp. Counsel (daft) in support of defts application to enlarge their time to rem. cond, etc, as indicated.
10-03-75	7	Filed copy of Pltff's. motion filed 9-19-75 with proof of service on defts.
10-3-75	8	Filed Pltffs memorandum of Law, etc as indicated.
10-6-75	9	Filed deft ss Affi davit & Notice of Motion for an order compelling pltff to appear for a psychiatric examination, etc, as indicated rtble before Pierce, J. on 11-6-75.
11-13-75	10	Filed Pltffs Affid vit purs to Rule 9 Etc, as indicated.
11-17-75	11	Filed pltffs Affidavit in opposition to defts Motion compelling the pltff to appear for a physchiatricexamination, etc, as indicated.
11-23-75	12	Filed: Copy of an order Certificate of Default entered on 5-23-75.
11-21-75	13	Filed Defts. Motion & affidavit for an order enlarging defts. time to answer the complaint nunc pro tunc to 5-20-75. Ret. Sine Die.
11-24-75	14	Filed Pltffs Notice of Motion for an enlargement of time rtble on 10-31-75 before Pierce, J.
11-24-75	15	Filed a ffidavit of pltff as indicated dt d 10-6-75.
11-24-75	16	Filed Pltffs Affidavit & Notice of Motion to dismiss the defts pending Mtion and Or filed 11-5-75 compelling the pltff to submit to a psychiatric examination, etc, rtblwe before Pierce, J on 12-2-75.
11-24-75	17	Filed pltffs memorandum of law, etc, as indicated.
11-24-75	18	Filed memo endorse on motion filed 11-24-75. The motion is denied without prejudice to renewal, Pierce, J. M/N
11-24-75		Filed Pltffs notice and motion for an order for Declaratory and summary judgment rtble on 10-2-75 before Pierce, J.
11-24-75	19	Filed Order that the above matter is referred to Mag. Raby etc, as indicated.
11-26-75	20	Filed Pltffs Affidavit re: proof of service, etc, as indicated.
11-25-75	21	Filed memo endorsed on motion filed 11-20-75. Motion Granted. Pierce, J. M/N
12-1-75	22	Filed Affidavit & notice of Cross Motion by deft City of New York for an order granting defts crosss motion for summary judgment etc, as indicated., rtble on 11-20-75.
12-1-75	23	Filed memo of l w by deftCity of New York in spport of the cross motion to dismiss the complint.
1-16-76	24	Filed Pltffs Affidavit & Motion enlarging pltffs time to file an Amendment nunc pro tunc, etc, as indicated.
1-16-76	25	Filed Pltffs Affidavit with proof of service as indicated.
1-20-76	26	Filed Pltffs Affidavit & Notice of Motion for an order enlarging time etc, as indicated rtble before Pierce, J. on 1-30-76.
1-20-76	27	Filed Pltffs affidavit with Proof Of Service attached.
2-13-76	28	Filed Pltffs Affidavit & Notice fo Motion for an order enlarging pltffs time to Amend nunc pro tunc to Nov 21, 1975, etc, as indicated rtble before Pierce, J. on 2-27-76.
3-31-76	29	Filed memo end on motion filed 1-16-76. Motion granted as indicated. Pierce, J. M/
3-31-76	30	Filed memo end. on motion filed 1-20-76. Motion granted to the extendt indicated. PIERCE, J. m/N.
3-31-76	31	Filed memo end. on motion filed 11-5-75. Motion denied without prejudice as indica Pierce, J. M/N.

DOCKET ENTRIES 75 CIVIL-1676

...ANT VS. BD OF EDUCATION, ETC. 75 Civ. 1676 PIERCE, J.

DATE	PROCEEDINGS
	PAGE 3
4-1-76	Filed Order: The defts motion purs to Rule 35 is denied at this time pending resolution of the exhaustion question, without prejudice to renewal at a later time. Since this ruling maked the pltffs motion for a protective order moot, that motion is denied on that basis, Pierce, J. M/N.
4-6-76	Filed Pltffs (Robert Grant) letter addressed to Pierce J. dtd. April 3, 1976.
8-11-76	Filed Opinion #44957. The Clerk is directed to prepare a partial judgment in accordance with this opinion & submit it to the Court for approval. This action is referred again to Mag. Raby, this time with the request that he confer with the parties within 45 days, if possible, regarding settlement of remaining aspects of this case....Pierce J.(mn) Judg. Clerk
09-02-76	Filed Judgment, Ordered that pltff Robert Grant have judgment against defts Irvi Anker and Frank C. Arricale, II as to liability only upon pltffs claim purs to 42 U.S.C. 1983 and further ordered that deft Bd of Education have judgment aginst pltff RobertGrant, dismissing the complaint as to daid deft only, and that the determination that the pltff Robert Grant be placed on health leave as of Dec 20,19 be considered null and void Ordered that Robert Grant pltff be reinstated to t position he held at the time said determination was made and the pltff be given credit toward retirement for any time eahas lost as a result of his having been placed on health leave as described above, Pierce, J. Judgment Entered, Clerk.
10-22-76	PRE-TRIAL CONF HELD MAG. RABY
9-29-76	PRE-TRIAL CONFERENCE HELD BY RABY
12-13-76	Filed Report of Mag. Raby to Pierce, J. dtd 12-10-76
12-20-76	Filed defts memorandum of law as indicated.
12-21-76	Filed letter from Pltff Robert Grant addressed to Pierce, J. dtd 12-16-76.
12-21-76	Filed Memo endorsed on letter from Pltff dtd. 12-16-76. Pierce, J.
12-28-76	PTC Held Raby Mag
1-31-77	Filed order that counsels for defts. submit an affdvt. by 2/11/77 to th amount of damages due pltff. in the event liability in damages is found The court will not entertain any application by pltff. to amemd pleadin to include any exemplary damages claim. The court once more suggest tha parties attempt to settle matter prior to courts decision... So Ordered PIERCE, J. Mailed copy to Pro Se. & m/n.
2-15-77	Filed Affdvt. of Irving B. Lustgarten, in response that he has been requested to compute the salires of the petitioner.
3-2-77	Filed report of United States Mag. Raby.
3-2-77	Filed Memorandum & Order Pur. to Rule 60(b) FRCP a corrected judgment shall be entered....Judgment for Pltff.....Pierce J. (mailed notice)
3-3-77	Filed Order Correcting Partial Judgment. Ordered that the 8th line of the Partial Judgment dtd. 8/31/76 is deleted & in place & stead of "only, and having dismissed the claims pur. to 42USC 1983 & 1985 as to the dft. & the 2nd decretal paragraph is deleted as indicated. & further the Court reserves decision on pltffs. claims agaisnt the dft. Board of Education as indicated. & futher ordered that this corrected Partial judgment be attached to the Judgment dtd. 8/31/76.....Pierce J. Judgment Entered 3/3/77 Clerk, Ent. 3/3/77. (mailed notice)
1-21-77	FILED STIPULATION & ORDER DROPPING ANNUNZIATA AS DEFT + AGREEING TO TRIAL WITHOUT JURY - PIERCE, J
	Cont'd on Page 4

D. C. 109 Criminal Continuation Sheet

DOCKET ENTRIES 75 CIVIL 1675

DATE	PROCEEDINGS PAGE 4
3-4-77	Filed Order and Final Judgment #77,340 Ordered, Adjudged and decreed- that pltff. Robert Grant, have judgment against defts. Irving Anker and FRANK C. Arricale, II; pursuant to Pltff's claims under 42 U.S.C. 1983 and against defr. Board of Education of the City of N.Y. pursuant to pltffs. claims under 28 U.S.C. 1331, for damages in the amount of $35,698 plus interest at six per cent from Oct. 1,1976 and it is further Ordered that pltff. shall recover his costs, to be taxed by the clerk..... So Ordered....PIERCE J. Judgment Ent. 3-7-77. m/n & Mailed copy to Pro.S
3-14-77	Filed Order & Amended Final Judgment #77,372 It is ordered that the Judgment #77,340 is amended ... that the pltff. have judgment against deft. Frank C. Arricale, II, ; deft. Board of Education of the City of N.Y. for damages in the amount of $35,698.24 plus interest at six per cent from 10-1-76. & that the defr. Irving Anker, have judgment against the pltff dismissing the complaint and ordered that pltff shall recover his costs to be taxed by the clerk. PIERCE J. Judgment Ent. on 3-15-77.....CLERK, Mailed copy to ProSe & m/n
3-15-77	Filed order Amending the order dated 2-28-77 See Amended Final Judgment entered on 3-14-77. Attached copy to order dated 2-28-77 & mailed copy to ProSe & m/n
3-23-77	Filed defrs. notice of appeal to the 2nd Circuit U.S.C.A. fromthe order and final judgment entered on Mar. 7,1977...Mailed Notice.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

VERIFIED PETITION

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ROBERT GRANT,

PETITIONER,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II., EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

Index No.
VERIFIED PETITION

Petitioner resides at:
750 Kappock Street
Bronx, N.Y. 10463

Petitioner, for his verified petition herein alleges as follows:

1. Petitioner is a tenured high school teacher employed by the Defendant Board of Education of the City Of New York.

2. Defendant Board of Education of the City of New York (the "Board") is a public body created pursuant to Article 52-A of the Education Law of the State of New York and has the powers and duties conferred by said Article.

3. Defendant Irving Anker is the Chancellor of the City School District of the City of New York.

4. Defendant Frank C. Arricale, II, is the Executive Director of the Division of Personnel.

5. This proceeding is brought pursuant to the Civil Rights Act of 1871, 42 U.S.C.A. 1983 and 1985 (3) for an order annulling the determination of Defendants, allegedly dated December 20, 1974 placing Petitioner on medical leave of absence in violation of lawful procedure and in excess of Defendant's authority and that said determination and other acts of Defendants were both in violation of statute and contractual obligations to which Defendants were parties and deprived Petitioner of his constitutional right to due process.

VERIFIED PETITION

6. This action is being commenced by an order to show cause because the acts of Defendants as herein described have resulted in Petitioner being unlawfully placed on medical leave without pay and deprived of any source of income since December 20, 1974.

7. Petitioner, during the Fall 1974 school term, was serving on assignment at Defendents request at the central headquarters of Defendent Board.

8. Because of certain temporary medical problems, Petitioner was required to be absent from his job on certain occasions during September, October and November, 1974.

9. Upon information and belief, as a result of the aforementioned absences the issuances of checks to Petitioner for certain periods in October and November were held up by Defendant Board.

10. On or about December 6, 1974, Defendants sent, or caused to be sent, a notice from the Medical Division of the Office of Personnel of Defendant Board (the "December 6 notice") requesting Petitioner to appear at the Office of the Medical Director on December 13, 1974 for a physical examination. (A copy of the notice is attached hereto as Exhibit A). Said notice specifically stated that the scheduled examination was requested "in connection with absence."

11. In December, 1974 Petitioner enlisted the aid of the firm Posner & Krasnow as counsel in order to collect the checks due him.

12. Subsequent to the December 6 notice and on or about December 10, 1974, Mr. Posner told Petitioner that he had been assured by an agent of Defendants that the processing of the checks due him would be expedited if Petitioner would report to the Medical Office for an informal physical examination.

VERIFIED PETITION

13. In reliance upon the statement in the December 6 notice that the examination was "in connection with absence" and in reliance upon Defendants' representation that an informal medical examination was being requested in connection with the processing of the aforementioned checks, Petitioner appeared for a medical examination on December 10, 1974 (the "December 10 examination").

14. At the conclusion of the December 10 examination Petitioner was told by Dr. Wright, the examining physician, that his medical was satisfactory and that there was no problem about him continuing at work.

15. On or about December 16, 1974 Petitioner received checks from Defendant for all back periods in question.

16. From November 19, 1974 Petitioner worked every school day including the day of the December 10 examination up to and including December 20, the last working day prior to the Christmas recess.

17. On or about December 16, 1974, Defendant sent or caused to be sent to Petitioner another notice from the Medical Division requesting him to appear at the Office of the Medical Director for another physical examination on January 6, 1975 (the "December 16 notice). This notice stated that the examination was "in connection with your fitness to return to duty." (emphasis added) (A copy of this notice is attached hereto as Exhibit B.)

18. However, notwithstanding the language of the December 16 notice, Petitioner was present at his job every day between the December 10 examination examination and the December 16 notice, and during that period never left, or was in any way requested to leave his duties.

VERIFIED PETITION

19. On or about December 20, 1974 Defendant Arricale sent or caused to be sent to the Petitioner a letter (the "December 20 letter") (which letter is annexed hereto as Exhibit C) which read, in full:

> The School Medical Director has submitted a report which contains the following recommendation:
>
> "Health leave to February 1, 1975 and possibly to June 30, 1975. He will be re-examined prior to return to duty."

20. The alleged "report" referred to in the December 20 letter purporting to recommend health leave for Petitioner was not enclosed in the December 20 letter from Defendant Arricale to Petitioner and has never been received or in any other way seen by the Petitioner.

21. Petitioner returned to work following the Christmas recess on January 2, 1975. Upon his return he was told by an agent of Defendants that he was listed as being on medical leave as of December 20, 1974. Petitioner replied that he had received no notice of any kind that the purported recommendation of the Medical Director had been accepted and that, accordingly, he had never been notified that he had been placed on medical leave. The employee then asked Petitioner to wait and, after approximately 30 minutes, returned and handed to Petitioner another letter signed by Defendant Arricale (the "determination letter"). Said letter was dated December 20, 1974 and read precisely the same as the letter set forth as Exhibit C herein except that a sentence was added which read: "Accordingly you are on leave of absence effective immediately." (A copy of the letter is annexed hereto as Exhibit D.)

22. Upon information and belief the letter described in the above paragraph was prepared on January 2, 1975 and backdated to December 20, 1974.

23. Pursuant to a request dated January 17, 1975, Petitioner submitted to another physical examination on January 27, 1975. Prior to such examination, Petitioner was examined by his private physician who certified that the Petitioner was in good health. Subsequent to the examination, and at Defendants' request, Petitioner provided Defendants with the report of his physician. (A copy of this report is annexed hereto as Exhibit E.)

24. At the January 27, 1975 examination, Petitioner was given Form OP-419-MED (a copy of which is annexed hereto as Exhibit F) and asked to have his physician supply a report "concerning the diagnosis, prognosis and treatment in your case." This information was requested notwithstanding the fact that Petitioner had already taken an examination on December 10, 1974 as a result of which no medical problems were uncovered. Petitioner was thus required by Defendants to request his physician to make statements concerning an undisclosed medical condition about which the physician had no information and as to which no evidence has ever been shown concerning even the existance of any such condition, such conduct by Defendants clearly shows the pattern of harassment evidenced by Defendants' acts herein.

25. On February 3, 1975, Defendant Arricale wrote a letter which stated in part:

> "The first finding of our Medical Bureau was that he (Petitioner) was unfit for duty and he was placed on health leave to February 1, 1975. He was subject to re-examination to determine fitness thereafter. Additional medical analysis and reporting is underway
>
> It is necessary that Mr. Grant remain on health leave in the interim on the basis of the medical finding to date."

(A copy of this letter is annexed hereto as Exhibit G.)

26. On February 3, 1975 Defendants sent or caused to be sent to Petitioner a letter from the Interim Acting Medical Director of Defendant Board requesting that Petitioner appear on February 13, 1975 for a psychiatric examination. (A copy of this letter is annexed as Exhibit H.)

FOR A FIRST CAUSE OF ACTION
AGAINST THE BOARD, SEEKING
DECLARATORY JUDGMENT

27. Petitioner repeats and realleges each and every allegation set forth in paragraphs one through twenty-six, inclusive as though fully set forth herein.

28. The December 6 notice and the December 10 examination held thereunder were unlawful, undertaken in violation of lawful procedure and any findings made on the basis thereof are null and void and of no effect.

29. Section 2568 of the Education Law states:

> The superintendent of schools of a city having a population of one million or more shall be empowered to require any person employed by the board of education of such city to submit to a medical examination by a physician or school medical inspector of the board, in order to determine the mental or physical capacity of such person to perform his duties, whenever it has been recommended in a report in writing that such examination should be made. Such report to the superintendent may be made only by a person under whose supervision or direction the person recommended for such medical examination is employed.

> The person required to submit to such medical examination shall be entitled to be accompanied by a physician or other person of his own choice. The finding upon such examination shall be reported to the superintendent of schools and may be referred to and considered for the evaluation of service of the person examined or for disability retirement.

30. Upon information and belief, said Section was not complied with in that no report in writing by Petitioner's supervisor recommending a physical examination was ever made prior to the December 6 notice.

31. Section 2568 was further violated through the acts, omissions and representations of Defendants and their agents who gave the impression that the December 10 examination was scheduled for the purpose of settling the question of Petitioner's claim to back pay.

32. Defendants acts described in the above paragraph and Petitioner's reliance thereon effectively denied Petitioner the right to be accompanied by a physician or other person of his choice as provided by Section 2568 and thus denied Petitioner his constitutional right to due process.

33. A justiciable contraversy exists between Petitioner and Defendant Board and as a result of the acts of Defendants Petitioner has been unlawfully placed on medical leave without pay and has been damaged in an amount equaling his salary from December 16, 1974 to the date of reinstatement to his job.

FOR A SECOND CAUSE OF ACTION
AGAINST THE BOARD SEEKING
DECLARATORY JUDGMENT

34. Petitioner repeats and realleges each and every allegation set forth in paragraphs one through thirty-three inclusive as though fully set forth herein.

35. Defendants' notices requesting Petitioner to undergo a physical examination dated December 6, 1974, December 16, 1974 and January 17, 1975; Defendants' notice requesting Petitioner to undergo a psychiatric examination, dated February 3, 1975; and the actual physical examinations given to Petitioner on December 10, 1974 and January 27, 1975 were improper and in violation of the Agreement currently in effect between Defendant Board and the United Federation of Teachers (the "union contract") and such notices and examinations are null and void and of no effect.

36. Article IV F 4 of the union contract provides that:

> "The report of the immediate supervisor requesting examination of a teacher pursuant to Education Law Section 2568 shall be made in duplicate. A copy of the report shall be forwarded to the teacher."

37. Neither Defendants nor their agents or employees have sent or caused to be sent to Petitioner any such report from Petitioner's supervisor which could be, or purport to be, the basis of the above-described notices and physical examinations.

38. As a result of Defendants' failure to give Petitioner actual notice of the basis of the request for the physical examinations as provided for in Article IV F 4 of the union contract, Petitioner was unable to exercise his rights under the law including those under Section 2568 of the Education Law.

39. A justiciable contraversy exists between Petitioner and the Defendant Board and as a result of the acts of Defendants Petitioner has been unlawfully placed on medical leave without pay and has been damaged in the amount of time toward retirement from December 16, 1974 to the date of reinstatement to his job.

VERIFIED PETITION
FOR A THIRD CAUSE OF ACTION
AGAINST THE BOARD, FOR BREACH
OF CONTRACT

40. Petitioner repeats and realleges each and every allegation set forth through paragraphs one through thirty-nine inclusive, as though fully set forth herein.

41. Defendants did conspire among themselves and with their agents to wilfully conceal, and did wilfully conceal from Petitioner, the basis for the December 6 notice and prevented Petitioner from understanding that the December 10 examination could substantially affect his continued tenure in his job, his property rights and his professional reputation thereby depriving Petitioner of his constitutional right to due process.

Fourteenth Amendment to the Constitution Of The United States; Civil Rights Act of 1871, 42 U.S.C.A. 1983 and 1985 (3) and the laws of the State of New York.

And in Lombard v. Board of Education- United States Court Of Appeals- Second Circuit:

> "The federal remedy is supplementary to the state remedy, and the latter need not first be sought and refused before the federal one is invoked."
>
> ". . . for section 1983 gives him an independent supplementary cause of action and he may choose the federal court as the preferred forum for the assertion of constitutional claims of due process."
>
> "We conclude, therefore, that he should be given a trial in the district court to determine whether appellees have violated his constitutional rights."
>
> Lombard v. Board of Education
> U.S. Court of Appeals- Second Circuit
> S 502 F2d 631 (1974)

42. As a result of Defendants' acts as described herein and as a result of the aforedescribed conspiracy, Defendants have deprived Petitioner of continued tenure in his job, his property rights and his professional reputation without providing for the procedural due process and hearing required by the United States Supreme Court in Board of Regents v. Roth.

Mr. Justice Marshall has written that:

> "To have a property interest in a benefit, a person must have more than an abstract need or desire for it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect these claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined. It is the purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims."
>
> Board of Regents v. Roth
> United States Supreme Court
> 408 U.S. 564 92 S Ct 2701, 33 L. Ed. 2d 548 (1972)

43. As a result of the acts of Defendants Petitioner has been unlawfully placed on medical leave without pay and is entitled to prospective damages to the extent of salary till the time of his retirement and retirement benefits based on normal life expectancy- a total of $365,000 with interest from the 21st day of December, 1974.

Pierce v. Tennessee Coal, Iron and R. Co.
175 U.S.1, 43 L.Ed 591, 19 S. Ct. 335

Gallaspy v. Warner (Okla). 324 P2d 848

FOR A FOURTH CAUSE OF ACTION, IN TORT,
AGAINST ALL OF THE DEFENDANTS

44. Petitioner repeats and realleges each and every allegation set forth in paragraphs one through forty-three, inclusive as though fully set forth herein.

45. As a result of the aforedescribed conspiracy to conceal from the Petitioner the potential effect of the December 6 notice of examination, which conspiracy resulted in Defendants placing Petitioner on medical leave, Defendants prevented Petitioner from the exercise of his right to an independent evaluation by a committee of physicians as provided for in Article IV F 4 of the union contract and thereby deprived Petitioner of his right to a hearing as provided for by said union contract and of his contractual right to due process.

46. Subsequent to the sending of the December 6 letter (Exhibit C herein), Defendants sent Petitioner the December 16 notice scheduling another physical examination for January 6, 1975. The scheduling of the examination confirmed that the December 20 letter setting forth the recommendation of the Medical Director was only advisory and that a further examination or examinations would be necessary before any determination was made with respect to the recommendation.

47. Accordingly, Defendants' action taken before Petitioner was re-examined pursuant to the December 16 notice placing Petitioner on medical leave effective December 20, 1974 was arbitrary and capricious and in excess of Defendants' authority and such determination is null and void and of no effect for

Mr. Justice Marshall has written that:

> "Employment is one of the greatest, if not the greatest, benefits that government offer in modern day life. When something as valuable as the opportunity to work is at stake, (emphasis added) the government may not reward some citizens and not others without demonstrating that its actions are fair and equitable. And it is procedural due process that is our fundamental guarantee of fairness, our protection against arbitrary, capricious and unreasonable action."
>
> Board of Regents v. Roth

48. As a result of the acts of Defendants Petitioner has been unlawfully placed on medical leave without pay, has been denied the opportunity to work and is entitled to exemplary damages of $1,000,000.

FOR A FIFTH CAUSE OF ACTION AGAINST THE BOARD AND ALL THE DEFENDANTS

49. Petitioner repeats and realleges each and every allegation set forth in paragraphs one through forty-eight inclusive as though fully set forth herein.

50. As a result of the aforedescribed conspiracy and other acts of Defendants herein, Petitioner has had his professional reputation damaged, has been subjected to harassment and humiliation through the holding and scheduling of multiple examinations, physical and mental, without reasonable cause, causing abuse and opression and is entitled to compensatory damages of $500,000.

WHEREFORE, Petitioner demands judgment:

With respect to the first through fourth causes of action;

a. Annulling the determination of Defendants placing Petitioner on medical leave of absence without pay effective December 20, 1974;

b. Reinstating Petitioner to his job;

c. Awarding Petitioner back pay with interest from December 16, 1974 to the date of reinstatement to his job;

d. Awarding Petitioner time toward retirement from December 16, 1974 to the date of reinstatement to his job.

e. Awarding Petitioner prospective damages in the amount of $365,000 with interest from the 21st day of December, 1974..

f. Awarding Petitioner exemplary damages of $1,000,000.

With respect to the fifth cause of action:

g. Awarding Petitioner compensatory damages in the amount of $500,000.

Robert Grant

Dated: April 7, 1975
New York, New York

Robert Grant
Petitioner

Sworn To 7 April 1975

EXHIBIT A ANNEXED TO VERIFIED PETITION
REQUEST TO APPEAR FOR PHYSICAL EXAMINATION

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
OFFICE OF PERSONNEL
MEDICAL DIVISION
65 COURT STREET
BROOKLYN, N. Y. 11201

PHONE: 596-6050-1-2

December 6, 1974

Dear

Will you kindly call at my office, Room 201, on Friday, December 13, 1974 between 2:00 and 4:00 P.M. for examination in connection with absence.

Thank you.

Robert Grant
750 Kappock St.
N.Y., N.Y. 10463
(Bronx)

Very truly yours,

Sidney Leibowitz, M.D.
Medical Director

OP 402-MED 750 SETS OF SHEETS 15 PADS 9-13-73 134

ry

Exhibit A

EXHIBIT B ANNEXED TO VERIFIED PETITION - REQUEST TO APPEAR FOR PHYSICAL EXAMINATION IN CONNECTION TO FITNESS TO RETURN TO DUTY

BOARD OF EDUCATION OF THE CITY OF NEW YORK
Office of Personnel
Medical Division
65 Court Street
Brooklyn, N.Y. 11201

Phone: 596-6050-1-2

Date December 16, 1974

Dear Sir/Madam:

Will you kindly appear at my office, Room 201, on _____ Monday, January 6, 1975 between 1:30 and 3:00 p.m. for examination in connection with your fitness to return to duty. Thank you.

Very truly yours,
Sidney Leibowitz

Sidney Leibowitz, M.D.
School Medical Director

Robert Grant
55 W. 92nd St.
New York, N.Y. 10025

ry

Exhibit B.

EXHIBIT C ANNEXED TO VERIFIED PETITION
LETTER FROM ARRICALE II DATED 12/20/74

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET
BROOKLYN, N.Y. 11201

FRANK C. ARRICALE, II
EXECUTIVE DIRECTOR

596-6121/22/23

December 20, 1974

Mr. Robert Grant
55 West 92 Street
New York, N. Y. 10025

Dear Mr. Grant:

The School Medical Director has sumbitted a report which contains the following recommendation:

"Health leave to February 1, 1975 and possibly to June 30, 1975. He will be re-examined prior to return to duty."

Very truly yours,

Frank C. Arricale II

FRANK C. ARRICALE, II
Executive Director

FCA:MCJ:rk

CC: Mr. Irwin Fleischner, Principal
Mrs. Bertha Gordon, Assistant Superintendent

Exhibit C

EXHIBIT D - LETTER FROM ARRICALE II
ANNEXED TO VERIFIED PETITION DATED 12/20/74

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET
BROOKLYN, N.Y. 11201

FRANK C. ARRICALE, II
EXECUTIVE DIRECTOR

SDG-6121/22/23

December 20, 1974

Mr. Robert Grant
55 West 92 Street
New York, N.Y. 10025

Dear Mr. Grant:

The School Medical Director has submitted a report which contains the following recommendation:

"Health leave to February 1, 1975 and possibly to June 30, 1975. He will be re-examined prior to return to duty."

Accordingly you are on leave of absence effective immediately.

Very truly yours,

Frank C Arricale

FRANK C. ARRICALE, II
Executive Director

FCA:MCJ:rk
CC: Mr. Irwin Fleishner, Principal
Mrs. B. Gordon, Assistant Superintendent

Exhibit D

EXHIBIT E ANNEXED TO VERIFIED PETITION
PHYSICIAN'S REPORT 1-15-74

U.S. Reg. No. AM1737228
Kingsbridge 8-2434
RICHARD S. HAUBEN, M. D.
Riverdale, N.Y. 10471
4665 Henry Hudson Pkwy., W.
Office Hours: By Appointment

NAME _____ AGE _____
ADDRESS _____ DATE _____

This is to certify
that Mr. Robert
Grant is in good
health and free
from any communicable
diseases.

R

Exhibit E

EXHIBIT F ANNEXED TO VERIFIED PETITION
REQUEST FOR MEDICAL REPORT

BOARD OF EDUCATION OF THE CITY OF NEW YORK
MEDICAL DIVISION - ROOM 202
65 COURT STREET, BROOKLYN, NEW YORK 11201

DATE: 1/27/75

NAME Robert Grant

ADDRESS: _____

PURPOSE OF EXAMINATION: _____

Dear Sir/Madam:

Before a recommendation is made on your physical status it will be necessary for you to arrange for submission of the evidence checked below:

X Report from your physician concerning the diagnosis, prognosis and treatment in your case.

_____ Report from _____ Hospital, giving complete details of your hospitalization there, including pathological findings, if any.

_____ Your personal physician's report of a complete urinary work-up including urinalysis, concentration test, BUN or NPN, and, at his discretion, catheterized urine analysis and/or I.V.P.

_____ Your personal physician's report of a Glucose Tolerance Test within the past week (actual figures).

_____ Your personal physician's report of recent X-Rays, as follows:

_____

_____

(specify)

_____ Other (As specified): _____

_____

This material should be sent to me at the above address. It is requested that the report not be written hereon, but that it be submitted on physician's letterhead or on the official stationery of appropriate medical authorities.

It will be helpful to us if you comply with this request as quickly as possible.

Very truly yours,

Sidney Leibowitz, M.D.
School Medical Director

Exhibit F

EXHIBIT G ANNEXED TO VERIFIED PETITION
LETTER FROM ARRICALE II DATED 2/3/75

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET
BROOKLYN, N.Y. 11201

FRANK C. ARRICALE, II
EXECUTIVE DIRECTOR

February 3, 1975

Mr. Michael A. Rebell
230 Park Avenue
New York, N.Y. 10017

Dear Mr. Rebell:

This is in reply to your letter of January 16, 1975 to Mr. Anker in regard to Mr. Robert Grant, a teacher currently on health leave.

The first finding of our Medical Bureau was that he was unfit for duty and he was placed on health leave to February 1, 1975. He was subject to reexamination to determine fitness thereafter. Additional medical analysis and reporting is underway.

It is necessary that Mr. Grant remain on health leave in the interim on the basis of the medical finding to date.

Very truly yours,

Frank C. Arricale II

FRANK C. ARRICALE, II
Executive Director

FCA:MCJ:rk
CC: Mr. Michael Rosen, Esq.

Exhibit G

EXHIBIT H ANNEXED TO VERIFIED PETITION
REQUEST FOR A PSYCHIATRIC EXAMINATION

THE CITY SCHOOL DISTRICT OF NEW YORK
OFFICE OF PERSONNEL - MEDICAL DIVISION
65 COURT STREET
BROOKLYN, N.Y. 11201

NOTICE TO REPORT TO PANEL SPECIALIST

Medical Division

Tel. 596-6050-1-2

February 3, 1975

Mr. Robert Grant
55 West 92 Street
New York, NY

Dear Mr. Grant:

Will you kindly report to the office of Dr. PERCY MASON, panel PSYCHIATRIST, 37 East 67 Street, N.Y. 10021 on THURSDAY FEBRUARY 13, 1975 at 2:40 P.M.

If for any reason you cannot keep this appointment at the time specified, please telephone my office at once.

Very truly yours,

Arthur A. Nareff, M.D.

Interim Acting Medical Director

SL: jgm

OP-423-MED

Exhibit H

ANSWER

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
----------x

ROBERT GRANT,

Petitioner,

ANSWER

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II., EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

----------x

Defendants, answering the complaint herein by their attorney, W. BERNARD RICHLAND, Corporation Counsel, respectfully allege as follows:

1. Deny each and every allegation contained in paragraph "2" thereof and affirmatively state that the Board of Education is a corporate body created pursuant to Article 52 of the Education Law of the State of New York, to which the court is respectfully referred.

2. Deny each and every allegation contained in paragraph "5" thereof except admit that on December 20, 1974 plaintiff was properly placed on temporary health leave of absence until February 1, 1975.

3. Deny each and every allegation contained in paragraph "6" thereof.

ANSWER

4. Admit the allegations contained in paragraph "7" thereof, and affirmatively state that plaintiff was assigned to clerical duties at Board of Education headquarters in fall 1974 school term as a result of the unsatisfactory rating he recieved in January of 1974. A of which rating is annexed hereto and marked Exhibit I. The letter informing plaintiff of the rating and advising him of his rights with respect thereto is annexed hereto and marked Exhibit II.

5. Deny the allegation in paragraph "8" thereof that plaintiff's absenteeism during the fall of 1974 was caused by temporary medical problems.

6. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs "11", "12" and "13" thereof.

7. Deny each and every allegation contained in paragraph "14" thereof.

8. Deny each and every allegation contained in paragraph "18" thereof except admit that plaintiff continued working as a clerk from December 10, 1974 through December 16, 1974.

9. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "20" thereof, except admit that the report referred to in the December 20, 1974

letter was not enclosed with that letter. Defendants further deny that plaintiff was in any way entitled to this purely internal report and recommendation.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of paragraph "21" thereof, and affirmatively state that the intent and effect of the December 20, 1974 letter placing plaintiff on temporary health leave of absence was clear from the face of that letter, thereby providing plaintiff with notice of his being placed on health leave. Admit the allegations contained in the fourth and fifth sentences of paragraph "21" thereof, and affirmatively state that the letter annexed to the complaint as Exhibit D was issued at plaintiff's request in order to make it completely clear that he was on health leave of absence as of December 20, 1974.

11. Deny each and every allegation contained in the second and third sentences of paragraph "23" thereof, except admit that a copy of a brief inconclusive physician's report was submitted to the Medical Division and is annexed to the complaint as Exhibit E.

12. Deny each and every allegation contained in paragraph "24" thereof, except for the allegations contained in the first sentence thereof which are admitted.

13. Deny each and every allegation contained in paragraphs "27" and "28" thereof.

14. Deny any implication arising from paragraph "29" thereof that Section 2568 of the Education Law is applicable to the instant action.

ANSWER

15. Deny each and every allegation contained in paragraph "35" thereof.

16. Deny any implication arising from paragraph "36" thereof that Article IV F(4) of the UFT Agreement is applicable to the instant action.

17. Deny each and every allegation contained in paragraphs "37", "38" and "39" thereof.

18. Deny each and every allegation contained in paragraph "40" thereof.

19. Deny each and every allegation contained in the first sentence of paragraph "41" thereof. Deny or the relevancy/applicability of Lombard v. Board of Education, 502 F. 2d 631 (2nd Cir. 1974) to the instant action.

20. Deny each and every allegation contained in the first sentence of paragraph "42" thereof and further deny the relevancy or applicability of Board of Regents, 408 U.S. 564 (1972) to the instant action.

21. Deny each and every allegation contained in the first sentence of paragraph "43" thereof and further deny the relevancy or applicability of Pierce v. Tennessee Coal Co., 175 U.S. 1 and Gallo[illegible] v. Warner, 324 F. 2d 848 to the instant action.

22. Deny each and every allegation contained in paragraphs"44" and "45" thereof.

ANSWER

23. Admit the allegations contained in the first sentence of paragraph "46" thereof, but deny each and every allegation contained in the second sentence thereof.

24. Deny each and every allegation contained in the first sentence of paragraph "47" thereof and further deny the relevancy or applicability of Board of Regents v. Roth, 408 US 564 (1972) to the instant action.

25. Deny each and every allegation contained in paragraphs "48", "49" and "50" thereof.

FURTHER ANSWERING THE COMPLAINT HEREIN AND AS AND FOR A FIRST SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

26. The court lacks jurisdiction over the subject matter.

AS AND FOR A SECOND SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

27. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A THIRD SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

28. No final determination has yet been rendered by the defendants concerning plaintiff's medical fitness to teach and hence the complaint must be dismissed as

premature and speculative.

AS AND FOR A FOURTH SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

29. The court should abstain from entertaining this action due to the overriding state and local issues which would most appropriately be decided initially in a state forum.

AS AND FOR A FIFTH SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

30. Defendants have acted reasonably and proper and in accordance with all germane contractual, statutory and constitutional provisions.

AS AND FOR A SIXTH SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

31. The individual defendants have acted in good faith and in accordance with all germane provisions of law.

AS AND FOR A SEVENTH SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

32. The court lacks jurisdication over the persons of the defendants.

AS AND FOR A EIGHTH SEPARATE AND COMPLETE DEFENSE THERETO, DEFENDANTS RESPECTFULLY ALLEGE AS FOLLOWS:

33. None of the defendants, nor any of them, have engaged in a conspiracy to deprive plaintiff of any of his rights or in furtherance of any other illegal,

ANSWER

invalid or unconstitutional design, but rather have at all times acted in good faith and in accordance with all applicable provisions of law.

WHEREFORE, the complaint should be dismissed as a matter of law.

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants

By _____
Thomas C. Grable, Esq.
Assistant Corporation Counsel

EXHIBIT I ANNEXED TO ANSWER
INDIVIDUAL RATING REPORT

THE CITY SCHOOL DISTRICT OF NEW YORK
INDIVIDUAL RATING REPORT

Name [redacted] Soc. Sec. # 104 20 2510 File # 201 573

School James Monroe H.S. Borough Bronx District # CSS 78

License English

☒-Tenured ☐-Probationer ☐-Substitute
☐-Non-Tenured Supervisor

Rating U (S, U, or D) For the Period From Sept. 5, 1973 To June 26, 1974.

Current Salary Rate $ 10,700 Per annum.

Absence Excluding Non-Attendance				Lateness			Days in C.A.R.*	or	Borrowed Days**	Days of Substitute Service
T	D	H	M	T	H	M				
17	19						0			

*Regularly appointed staff may not exceed 200; regular substitutes, 120.
**May not exceed 20 for regularly appointed staff only.

Dated _____ Signature of Principal [redacted]
(If Other, Show Title)

ORIGINAL To Staff Member ADDITIONAL COPIES if required
DUPLICATE For School File by instructions on reverse

23-2800.40.0 (9000 PKGS) 12/72 Form OP 151

EXHIBIT I

EXHIBIT II ANNEXED TO ANSWER
LETTER FROM IRVING ANKER DATED 2/8/74

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

IRVING ANKER
CHANCELLOR

February 8, 1974

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. Robert Grant
55 West 92nd Street
New York, New York

Dear Mr. Grant:

I have received a recommendation from the Assistant Superintendent, Office of High Schools, that charges be preferred against you and that you be suspended with pay.

Please be informed that pursuant to Section 105 of the By-laws and the provisions of the State Education Law, I have this day charged you with:

conduct unbecoming your position;
violation of the By-laws of the Board of Education

and I hereby suspend you with pay from your duties as Teacher of English at James Monroe High School as of the close of business, February 8, 1974.

This matter will be presented to the Board of Education at its next regular meeting for consideration and action. At such time the Board of Education may proceed to appoint a trial examiner to hear and report to the Board of Education on the charges.

You will have the opportunity to appear in person or by counsel at the trial of the charges in accordance with Section 105 of the By-laws and to receive a copy of the specifications in advance of the trial.

Please report to Bertha C. Gordon, Assistant Superintendent, for appropriate assignment during the pendency of the suspension.

Very truly yours,

Irving Anker

IA:ms

IRVING ANKER
Chancellor

EXHIBIT II

MOTION FOR AN ORDER FOR DECLARATORY AND SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of	x	
ROBERT GRANT,	x	75 CIV 1676
PLAINTIFF,	x	
-against-	x	JUDGE PIERCE
BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,	x	
DEFENDANTS,	x	

SIRS:

PLEASE TAKE NOTICE that the undersigned will move this Court at 40 Foley Square, New York, N.Y., Courtroom_____, on October 2, 1975, at 10:00 o'clock in the forenoon or as soon thereafter as counsel can be heard, before the Honorable Lawrence W. Pierce, for an order for Declaratory and Summary Judgment for Causes of Action I, II, IV, V, in the above captioned case, pursuant to Rule 56 (a) (c) of Federal Rules of Civil Procedure and for such other relief as the Court may deem just and proper.

Dated: September 18, 1975
New York, N.Y.

Robert Grant

Plaintiff (pro se)
166 West 76th Street
New York, N.Y. 10023

Sworn to before me this
18th day of Sept. 1975
Albert A. Fazzino

ALBERT A. FAZZINO
Notary Public, State of New York
No. 24-3042480
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

75 SEP 19 PM 2 53
LAW DEPARTMENT

U.S.D.J.

AFFIDAVIT OF ROBERT GRANT READ IN SUPPORT OF MOTION FOR DECLARATORY AND SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT

ROBERT GRANT,

Plaintiff,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK; IRVING ANKER, CHANCELLOR; FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR;

Defendants,

75 CIV 1676
JUDGE PIERCE

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ROBERT GRANT, being duly sworn, deposes and says:

1. This affidavit is submitted by the Plaintiff (pro se) pursuant to Rule 9 (4) (f) of Federal Local Court Rules for the United States District Court For The Southern District Of New York in support of his Motion filed September 18, 1975 for Declaratory and Summary Judgment for Causes Of Action I, II, IV, V, in the above captioned Matter scheduled for Conference October 9, 1975.
Copy of Notice of Conference is annexed as Exhibit I.

2. On September 26, 1975 Plaintiff wrote to Counsel for the Defendants offering to settle the Matter out of Court.
A copy of the letter is annexed as Exhibit II.

3. Counsel for the Defendants' reply of October 1, 1975 was indefinite.
A copy of the letter is annexed as Exhibit III.

4. Pursuing the Matter further, in good faith, on October 4, 1975 the Plaintiff wrote to Counsel for the Defendants requesting an offer of settlement from them.
A copy of the letter is annexed as Exhibit IV.

AFFIDAVIT OF ROBERT GRANT READ IN SUPPORT OF MOTION FOR DECLARATORY AND SUMMARY JUDGMENT

5. There's been no reply from Counsel for the Defendants and pursuant to the aforementioned Rule 9 (4) (f) of the Southern District the Plaintiff's affidavit indicates he has been unable to reach an agreement on the issues raised by the motion.

Dated: October 9, 1975
New York, N.Y.

Robert Grant
Plaintiff (pro se)

Sworn to before me this
9th day of October 1975

Albert A. Fazzino

ALBERT A. FAZZINO
Notary Public, State of New York
No. 24-1947240
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1977

EXHIBIT I ANNEXED TO AFFIDAVIT
NOTICE OF CONFERENCE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

Grant
vs
Board of Education et al

: 75-1676 (LWP)
: Docket Number
:
: NOTICE
:
:

----------x

The above-entitled matter is assigned to the undersigned judge. Counsel herein are directed by the Court to attend a calendar call on 10-9-71 9:30 - Rm 318, to report on the status of the case and any other relevant matters. The Court will require submission by plaintiff's counsel at that time of a written status report of the case. The Court also directs that plaintiff's counsel notify all other parties of this conference.

No adjournments will be granted. An appearance must be made, for each party, by an attorney familiar with the facts and current status of the case. Please do not call chambers.

LAURENCE W. PIERCE
U. S. D. J.

791-1016
0951

DK
DANIEL KENDALLY ~~Ext. 6277~~
Minute Clerk to Judge Pierce

Dated: New York, New York
9-26-71

Exhibit I

EXHIBIT II ANNEXED TO AFFIDAVIT
LETTER FROM ROBERT GRANT DATED 9/26/75

September 26, 1975
166 West 76th Street
New York, N.Y. 10023

Thomas C. Greble- Asst. Corp Counsel
The Law Department
Corporation Counsel
Municipal Building
New York, N.Y. 10007

Re: Grant -v- Board of Education, et al,
75 CIV 1676

Dear Mr. Greble:

Please be advised that the Plaintiff offers to settle the case out of Court pursuant to the Demands of Causes of Action I, II, IV, V of the above entitled Matter.

Yours truly,
Robert Grant

Sworn to before me
this 29th day of Sept 1975
Albert A. Pazmino
ALBERT A PAZMINO
Notary Public, State of New York
No. 31-3042480
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Mr Thomas C. Greble Asst Corp Counsel
The City of N.Y.
STREET AND NO. Law Dept Municipal Building
P.O., STATE AND ZIP CODE N.Y. N.Y. 10007
POSTMARK OR DATE
SPECIAL DELIVERY (extra fee required)
PS Form 3800 Apr. 1971
NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side)

No. 22885 RECEIPT

PS Form 3811, Jan 1975

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
9/29/75 Mr Thomas C. Greble
Asst Corp Counsel

3. ARTICLE DESCRIPTION:
REGISTERED NO. | CERTIFIED NO. 42785 | INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

DATE OF DELIVERY
ADDRESS (Complete only if requested)
POSTMARK

UNABLE TO DELIVER BECAUSE:

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED

Exhibit II

EXHIBIT III ANNEXED TO AFFIDAVIT
LETTER FROM THOMAS C. GREBLE DATED 10/1/75

The City of New York
LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N Y 10007
W. Bernard Richland
Corporation Counsel

October 1, 1975

Robert Grant
166 W. 76th Street
New York, N.Y. 10023

Re: Grant v. Board of Education

Dear Mr. Grant:

With respect to your letter dated September 26, 1975, in which you offered to settle the above-referenced action, let me suggest that you and I meet to discuss the possibility of settlement. The defendants are willing to consider any reasonable settlement offer and, quite frankly, there may be some grounds for discussion in this case.

Please let me know, either in writing or, preferably, by telephone at 566-2194.

Very truly yours

Thomas C. Greble

Thomas C. Greble
Assistant Corporation Counsel

EXHIBIT 4 ANNEXED TO AFFIDAVIT
LETTER FROM ROBERT GRANT DATED 10/4/75

October 4, 1975
166 West 76th Street
New York, N.Y. 10023

Thomas C. Greble- Asst. Corp. Council
Law Department
Municipal Building
New York, N.Y. 10007

Re: Grant -v- Board of Education, et al
75 CIV 1676

Dear Mr. Greble:

Pursuant to your letter of October 1, 1975 the Plaintiff in the above entitled Matter may give further consideration to the Defendants upon receipt of an appropriate reply and a genuine offer from them.

Yours truly,

Robert Grant
Plaintiff (pro se)

SEAL TO BEFORE ME THIS
4 DAY OF OCT. 75
DAVID GROCK
NOTARY PUBLIC, State of New York
No. 31-5463625
Qualified in New York County
Commission Expires March 30, 1976

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one):
- ☐ Show to whom and date delivered..... 15¢
- ☐ Show to whom, date, & address of delivery.. 35¢
- ☐ RESTRICTED DELIVERY. Show to whom and date delivered..... 65¢
- ☐ RESTRICTED DELIVERY. Show to whom, date, and address of delivery 85¢

2. ARTICLE ADDRESSED TO:
10/6/75 Mr Thomas C. Greble

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	431 (57)	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY | POSTMARK

5. ADDRESS (Complete only if requested)

UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO Mr Thomas C. Greble-Asst Corp Council
Law Department
STREET AND NO. Municipal Building
P.O., STATE AND ZIP CODE N.Y. N.Y. 10007

CERTIFICATE OF FOR ADDITIONAL FEES
RETURN 1. Shows to whom and date delivered 15¢
RECEIPT 2. Shows to whom, date and where delivered 35¢
SERVICES With delivery to addressee only 65¢
DELIVER TO ADDRESSEE ONLY 50¢
SPECIAL DELIVERY (extra fee required)

POSTMARK OR DATE

PS Form 38 Apr. 1971 NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side)

No. 431850
RETURN RECEIPT
DELIVERY

Exhibit IV

NOTICE OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of the Application of	
ROBERT GRANT,	
Plaintiff,	NOTICE OF CROSS-MOTION
-against-	
	75 CIV 1676
BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,	JUDGE PIERCE
Defendants.	

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavits of Dr. Naomi de Sola Pool and Thomas C. Greble and the accompanying memorandum of law, defendants will cross-move this court on November 20, 1975 at the United States Courthouse, Room 318, New York, New York at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order granting defendants' cross-motion for summary judgment pursuant to FRCP 56, and for such other and further relief as the court may deem just and proper.

Dated: New York, New York
November 17, 1975

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, New York 10007

By: _____
THOMAS C. GREBLE
Assistant Corporation Counsel

TO: ROBERT GRANT
Plaintiff Pro Se
160 West 76th Street
New York, New York 10023

AFFIDAVIT OF DR. NAOMI DE SOLA POOL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT GRANT,	:	
Plaintiff,	:	
-against-	:	AFFIDAVIT
BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,	:	75 Civ. 1676 JUDGE PIERCE
Defendants.	:	

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

DR. NAOMI de SOLA POOL, being duly sworn, deposes and says:

1. I am an Assistant Medical Director of the Medical Division of the Board of Education of the City of New York and as such I am fully familiar with the facts and circumstances hereinafter set forth.

2. This affidavit is submitted in opposition to plaintiff's motion for summary judgment and in support of defendants' cross-motion for summary judgment on the grounds that (1) the action is speculative and premature since plaintiff has failed to exhaust his available and effective remedies and (2) none of plaintiff's "causes of action" have any merit.

3. The records of the Medical Division indicate that plaintiff is a high school teacher who was assigned to James Monroe High School for the academic year 1973-74.

AFFIDAVIT OF DR. NAOMI DE SOLA POOL

4. Upon information and belief, plaintiff taught until January of 1974, when the principal rated his teaching performance unsatisfactory and suspended him. A copy of the unsatisfactory rating is annexed hereto and marked Exhibit A. A copy of the letter informing plaintiff of his suspension is annexed hereto and marked Exhibit B. Upon information and belief, plaintiff never appealed that unsatisfactory rating through regular administrative channels although he had the right to do so and was informed of that right.

5. Due to the unsatisfactory rating, plaintiff was transferred from his teaching position to Board of Education headquarters, where he served as a clerk through the remainder of the school year ending in June, 1974.

6. In September of 1974, plaintiff returned to work as a teacher assigned to clerical duties in Board of Education headquarters. From October 17, 1974 through November 12, 1974 plaintiff was absent fourteen of twenty working days. A copy of his application for sick leave for those days is annexed hereto and marked Exhibit C. In order to determine the degree of disability resulting from his illness on these dates, plaintiff was notified on December 6, 1974 to appear at the Medical Division of the Board of Education for a medical examination. A copy of this notification is annexed hereto and marked Exhibit D.

AFFIDAVIT OF DR. NAOMI DE SOLA POOL

7. Plaintiff appeared at the Medical Division and was examined on December 9, 1974. A copy of the examining physician's handwritten report is annexed hereto and marked Exhibit E.

8. As a result of this examination, the Medical Division found plaintiff not fit to immediately return to his teaching duties. A copy of the memorandum stating this conclusion is annexed hereto and marked Exhibit F. This examination also revealed that plaintiff's absences in October and November of 1974 had been due to valid medical reasons and that he should be paid for the dates he was absent.

9. The Office of Personnel accepted the Medical Division's recommendation that plaintiff be placed on a health leave of absence and so notified plaintiff by letter dated December 20, 1974, a copy of which is annexed hereto and marked Exhibit G. Upon information and belief, plaintiff continued working as a clerk after December 9, 1974, because the Office of Personnel did not accept the Medical Division's recommendation until December 20, 1974 or at least because they failed to notify plaintiff until that date.

10. Since December 20, 1974 was the first day of the Christmas recess, plaintiff's first work day after December 20, 1974 was January 2, 1975. At that time plaintiff complained that he had not been placed on leave

of absence, although your affiant submits that it is obvious from the December 20, 1974 letter (annexed hereto as Exhibit G) that plaintiff was on health leave as of that date.

11. Upon information and belief, the second letter pertaining to plaintiff's leave of absence, annexed hereto as Exhibit H, was issued at plaintiff's request in order to further clarify his status as being on health leave of absence as of December 20, 1974.

12. On December 16, 1974, plaintiff was requested to appear for an examination at the Medical Division. There are two possible explanations for this notification so soon after the December 9th examination. First, it could have been sent as a result of a verbal request from the plaintiff to terminate his leave prior to February 1, 1975 or, second, the second letter could have been the result of an administrative error if the clerk who sent the notification did not realize he had already been examined.

13. In any event, plaintiff never appeared in response to this December 16 notification but because the December 9 examination resulted in the recommendation that plaintiff be placed on leave of absence until February 1, 1975, plaintiff's failure to appear in response to this notice was overlooked.

14. Accordingly, pursuant to the report of the December 9 examination, which stated that plaintiff should be reexamined prior to his return to teaching duties, plaintiff was notified on January 17, 1975 to appear for an examination. A copy of said notice is annexed hereto and marked Exhibit I.

15. Plaintiff appeared in response to this notice and was examined by staff physician Dr. Wright on January 27, 1975. A copy of the doctor's handwritten report, in which she recommends that plaintiff be referred to a consulting psychiatrist, is annexed hereto and marked Exhibit J.

16. The Medical Division utilizes the services of outside medical specialists selected from a list empanelled by the Board of Education when specialized medical expertise is required. In the present case, since a staff physician noted the possibility of a personality disorder, a psychiatric examination by a consulting psychiatrist was necessary before a final determination could be made as to plaintiff's fitness to return to teaching duty.

17. On or about February 3, 1975, plaintiff was requested to appear and be examined by Dr. Percy Mason, a panel psychiatrist. A copy of this request is annexed hereto and marked Exhibit K.

18. Plaintiff failed to appear at this scheduled psychiatric examination and failed to contact either the Medical Division or, upon information and belief, the panel psychiatrist at any time thereafter to explain his failure to appear. A letter to this effect from

Dr. Mason is annexed hereto and marked Exhibit L.

19. Plaintiff has thus failed to comply with the legitimate and reasonable request of the Medical Division that he be psychiatrically examined to determine his fitness to teach. It should be noted that no final determinations have been formulated with respect to plaintiff's mental health. Unless and until the consulting psychiatrist examines plaintiff, no determination as to whether he is medically fit to teach can be rendered. Should the consulting psychiatrist find the plaintiff well enough to resume his teaching duties, he will most likely be returned to his teaching duties. While the Medical Division has the ultimate responsibility to certify that teachers be continuously able to render effective pedogogical performance, the opinions of our consulting specialists are given great deference. Of course, if the plaintiff persists in his refusal to appear and be examined, the defendants' have no choice but to keep him on health leave of absence, for it would violate our duty to the children in the schools to permit a person to return to the classroom when the Medical Division is of the opinion that a possible personality disorder should be explored.

20. Based on all the foregoing, your deponent respectfully urges this court to deny plaintiff's motion for summary judgment on the grounds that the action is premature and speculative, for no final adverse finding

AFFIDAVIT OF DR. NAOMI DE SOLA POOL

has been rendered against the plaintiff. Moreover, should an adverse decision be rendered following an examination, the plaintiff has available to him effective administrative remedies set forth in the accompanying affidavit of Thomas C. Greble which he has not pursued.

Sworn to before me this
9th day of October, 1975
Ethel M. McDonald

ETHEL M. McDONALD
Notary Public, State of New York
No. 41-7317250
Qualified in Queens County
Commission Expires March 30, 1977

Dr. Naomi de Sola Pool
Dr. Naomi de Sola Pool

EXHIBIT A ANNEXED TO AFFIDAVIT
INDIVIDUAL RATING REPORT

THE CITY SCHOOL DISTRICT OF NEW YORK
INDIVIDUAL RATING REPORT

Name GRANT, ROBERT Soc. Sec. # 104 20 2610 File # 301 573

School James Monroe H.S. Borough Bronx District # CCG 78

License English

[X]-Tenured [ ]-Probationer [ ]-Substitute
[ ]-Non-Tenured Supervisor

Rating U (S, U, or D) For the Period From Sept. 5, 1973 To June 26, 1974.

Current Salary Rate $ 18,700 Per annum.

Absence Excluding Non-Attendance T	D	H	M	Lateness T	H	M	Days in C. A. R.*	or	Borrowed Days**	Days of Substitute Service
17	19						0			

*Regularly appointed staff may not exceed 200; regular substitutes, 120.
**May not exceed 20 for regularly appointed staff only.

Dated _____ Signature of Principal Steven J Cerdiner
(If Other, Show Title)

ORIGINAL DUPLICATE To Staff Member For School File ADDITIONAL COPIES if required by instructions on reverse

25-2500.40.0 (9000 PKGS) 12/72 Form OP 151

EXHIBIT A

EXHIBIT B ANNEXED TO AFFIDAVIT
LETTER FROM IRVING ANKER DATED 2/8/74

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
110 LIVINGSTON STREET
BROOKLYN, N.Y. 11201

IRVING ANKER
CHANCELLOR

February 8, 1974

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. Robert Grant
55 West 92nd Street
New York, New York

Dear Mr. Grant:

I have received a recommendation from the Assistant Superintendent, Office of High Schools, that charges be preferred against you and that you be suspended with pay.

Please be informed that pursuant to Section 105 of the By-laws and the provisions of the State Education Law, I have this day charged you with:

conduct unbecoming your position;
violation of the By-laws of the Board of Education

and I hereby suspend you with pay from your duties as Teacher of English at James Monroe High School as of the close of business, February 8, 1974.

This matter will be presented to the Board of Education at its next regular meeting for consideration and action. At such time the Board of Education may proceed to appoint a trial examiner to hear and report to the Board of Education on the charges.

You will have the opportunity to appear in person or by counsel at the trial of the charges in accordance with Section 105 of the By-laws and to receive a copy of the specifications in advance of the trial.

Please report to Bertha C. Gordon, Assistant Superintendent, for appropriate assignment during the pendency of the suspension.

Very truly yours,

Irving Anker

IA:ms

IRVING ANKER
Chancellor

EXHIBIT B

EXHIBIT C ANNEXED TO AFFIDAVIT
APPLICATION FOR EXCUSE OF ABSENCE FOR PERSONAL ILLNESS

OFFICE OF PERSONNEL
65 Court Street, Brooklyn, New York 11201

APPLICATION FOR EXCUSE OF ABSENCE FOR PERSONAL ILLNESS (SICK LEAVE)

☐ - Community District ☐ - City District Instructional Staff
☐ - For Information of Medical Division ☐ - Request for Medical Evaluation

Read rules on reverse and type separate application for each non-consecutive absence in month.

Rel 12/10/74

I. To be Completed by School Secretary or Applicant:

Full Name and Home Address of Applicant	School Number or Name and School Address
Robert Grant 750 Kappock Street New York, N.Y. 10463 ZIP	James Monroe High School 1300 Boynton Ave Bronx, N.Y. 10472 ZIP 10472

File # | Social Security # | School District #
License | Years of Service
☐ - Regularly Appointed ✓ | ☐ - Regular Substitute | ☐ - Per Diem Substitute

Inclusive Dates	From	To	Time Lost*	Days	Hours	Minutes	Illness Since September	Times	Days

*Note: For per diem substitute show only days during which applicant would otherwise have been employed in position held immediately prior to absence to be excused.

Dates on which absence occurred. Write name of month. Check with an "X" those days on which absence occurred.

Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Oct.																	X	X			X	X	X	X	X			X	X	X	X
Nov.	X			X								X																			

NB Check applicable item and indicate all necessary data called for under each item checked:

☑ A - ✓ DAYS EXCUSED WITH PAY FOR PERSONAL ILLNESS DEDUCTIBLE FROM C.A.R. OR SICK BANK**

**Note: Per diem substitute must surrender sick leave credit certificate dated prior to date of absence. (C.A.R. and Self-Treatment data to be omitted below.)

C.A.R. on Initial Day of Illness		Self-Treated Days Used This Year or Term	
Less Sick Days Now Claimed	—	Plus Self-Treated Days Now Claimed	+
Balance of Days Left in C.A.R.		Total Self-Treated Days Used	
(Minus Balance Shows Borrowed Days)		Total "Self-Treated" for Personal Business	

☐ B - ____ DAYS EXCUSED WITH PAY AND WITHOUT LOSS OF SICK LEAVE FOR CHILDREN'S DISEASES
Applies to rubeola, epidemic parotitis or varicella but not to rubella.

☐ C - ____ DAYS EXCUSED WITH PAY AND WITHOUT LOSS OF SICK LEAVE FOR ALLEGED LINE OF DUTY ACCIDENT — Report of Injury and Assignment (OP 200) must be filed prior to this application.

☐ D - ____ DAYS EXCUSED WITHOUT PAY. Does not apply to per diem substitutes.

E - OTHER:

II. To be Completed by Applicant (Check Only as Applicable):

- Self-Treated Days (if shown) are claimed for:
- Confidential Medical Report (OP 407) substituted for Section IV and mailed directly.
- I wish to borrow sick days to be repaid or constitute a debt to the Board of Education.
- I did / I did not report for duty to any afternoon or evening activity of the Board of Education or Community Board on any date for which excuse is requested.

Date November 26, 1974 Signature of Applicant Robert Grant

III. To be Completed by Principal (If Other Appropriate Supervisor, Show Title Below):

☐ - Approved without medical evaluation ☑ - Approved subject to medical evaluation
☐ - Disapproved for reason(s) indicated:

Date November 26, 1974 Signature of Principal Irwin Fleischner

IV. To be Completed by Physician or Other Authorized Practitioner (OP 407 is to be substituted for absence exceeding 20 consecutive school days or when report is confidential):

MEDICAL CERTIFICATION: As a duly licensed physician or other authorized practitioner, I certify that between the dates October 17, 1974 and November 12, 1974 the person named above was incapacitated for school duties and that I ~~attended the individual on the following dates:~~ {His been prescribed medication which is the only course of treatment that is necessary}. The technical designation of illness was:

commonly known as: Severe recurring Headaches

Physician's Address 123 W 79 St Telephone 247-0200

Typed or Printed Name FOUAD SUBUR

Date 11/26/74 Signature of Physician A. Pierohier, M.D.

(If other than M.D., professional title is:

V. To be Completed by Medical Division and Returned to School as Necessary:

Medical Recommendation Submitted as Noted Subject to All Administrative Requirements	✓ - Medically Approved From	To	☐ - Medically Disapproved From	To
- Ordinary Illness (Item A or Item D)	10/17/74	11/12/74		
- Enumerated Children's Disease (Item B)				
- Alleged Line of Duty Accident (Item C)				
- Other				

- Individual not to return to duty without further recommendation of Medical Division.

Additional Remarks:

12/10/74 EXHIBIT C

EXHIBIT D ANNEXED TO AFFIDAVIT
LETTER REQUESTING PHYSICAL EXAMINATION

BOARD OF EDUCATION
OF THE CITY OF NEW YORK
OFFICE OF PERSONNEL
MEDICAL DIVISION
65 COURT STREET
BROOKLYN, N. Y. 11201

PHONE: 595-6050-1-2

December 6, 1974

Dear

Will you kindly call at my office, Room 201, on Friday, December 13, 1974 between 2:00 and 4:00 P.M. for examination in connection with absence. Thank you.

Robert Grant
750 Kappock St.
B.X., N.Y. 10463
(Bronx)

Very truly yours,

Sidney Leibowitz, M. D.
Medical Director

GP 402-MED 750 SETS OF SHEETS 15 PADS 9-13-73 134

xy

EXHIBIT D

EXHIBIT E ANNEXED TO AFFIDAVIT
PHYSICIAN'S HANDWRITTEN REPORT

OFFICE OF PERSONNEL – MEDICAL DIVISION

NAME: Grant Robert DATE:
ADDRESS: 55 W. 92nd St. NYC 10035
SCHOOL: J. Monroe HS – X BORN: 2/23/29 APPOINTED:
EXAM. FOR: Absence (Fitness to return)
FILE NO. 301-573 SOCIAL SECURITY NO.
DIAGNOSIS:
ABSENT SINCE: EXPECTS TO RETURN: RETURNED:
DATE OF ACCIDENT: ABSENCE:

PHYSICAL EXAMINATION
HEIGHT & WEIGHT: 5'3" 140 HEART, PULSE: 80/min
VISION W.O.G.-R W.G.-R 20/30
" " " " " " 20/30 BLOOD PRESSURE: 125/80
EARS, HEARING: U NOSE, THROAT
EXTREMITIES: U THYROID: 0
LUNGS: Clear ABDOMEN: 0
OTHER DEFECTS: Back – no Tendenes or [illegible] of motion; Well Sinus Tendenes (+) [illegible]

HISTORY AND FINDINGS: Hx. reviews RTW 2/73, per diem & then in 9/73 as a regular teacher at James Monroe HS English – Assigned to 110 Livingston St. 2/74. + is active there. In June he went to his doctor for headaches & he has had headaches this semester Frontal + Temporal for these headaches. He refuses to say why he was

(CONTINUE ON REVERSE SIDE IF NECESSARY)

DIAGNOSIS: Distressed State – ? decompensated state

RECOMMENDATION: – Panel psych. He is not to return to classroom until cleared by Medical.

COMMENTS: NF HG [illegible]

EXHIBIT E ANNEXED TO AFFIDAVIT
PHYSICIAN'S HANDWRITTEN REPORT

HISTORY AND FINDINGS (Continued)

removed from his school to clerk
duties at 110 Liv. St...

He is agitated but controlled. He speaks
only of his headaches and his need for
being paid for his recent absences. He is
at work now (he tells me he had 3
absences since 11/12/74). He seems unable
to enter into any discussion re his demotion
from teaching to clerking. He emphasizes
that it bears no relationship to his need for
his checks. His affect is flat & he
lacks insight; & he is hostile. Verbose.

① - Report from his School. Why was he removed?

Ind. SS ② Paid Pres.

12/9/74 46 male teacher of 14 yrs. [illegible]
is quarrelling with rage as he [illegible]
his story that he has been denied [illegible] pay
checks. He has [illegible] expenses as a result [illegible]
[illegible] from his last appointment [illegible]
claims that resulted when lost a lawsuit
against tenants above who relentlessly annoyed
him by making noise. This teacher became
hostile when asked if he lived alone, or was
married and did not feel I have the right
to query him. Altho he expounded his
[illegible] with [illegible] gesticulation he
did not become obscene, or [illegible]
However he took down my [illegible] & told [illegible]
[illegible] to see me and [illegible] because [illegible]
[illegible] & refusing [illegible] pay [illegible]
[illegible] that [illegible] would [illegible]
[illegible] he refuse to accept a [illegible]
[illegible]

EXHIBIT F ANNEXED TO AFFIDAVIT
MEMORANDUM OF SIDNEY LIEBOWITZ, M.D.

Mr. Frank Arricale
Executive Director
Office of Personnel

The City of New York

Report of the MEDICAL DIVISION

released 12/12/74 [illegible]

Date December 10, 1974

File #367793

NAME OF TEACHER Robert Grant SCHOOL James Monroe H.S.

HOME ADDRESS 55 West 92 Street New York, NY 10025 ABSENT SINCE

DIAGNOSIS

This teacher at James Monroe H.S. currently assigned to 110 Livingston Street was seen in the Medical Division on December 9, 1974 because of agitation and unusual behavior. He was noted to be hostile, verbose and lacking in insight. He complained of headaches and expressed ideas of persecution. He is obviously unfit for duty. It is doubtful that he would agree to see a panel psychiatrist in his present agitated state.

RECOMMENDATION : Health leave to February 1, 1975 and possibly to June 30, 1975. He will be re-examined prior to return to duty.
NP:jgm

cc: Mrs. Betha Gordon
Assistant Superintendent

480 FORM OF 405 SM 7-69 142

SIDNEY LEIBOWITZ, M.D.
Medical Director

EXHIBIT F

EXHIBIT G ANNEXED TO AFFIDAVIT
LETTER FROM ARRICALE II DATED 12/20/74

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET
BROOKLYN, N.Y. 11201

FRANK C. ARRICALE, II
EXECUTIVE DIRECTOR

596-6121/22/23

December 20, 1974

Mr. Robert Grant
55 West 92 Street
New York, N. Y. 10025

Dear Mr. Grant:

The School Medical Director has sumbitted a report which contains the following recommendation:

"Health leave to February 1, 1975 and possibly to June 30, 1975. He will be re-examined prior to return to duty."

Very truly yours,

Frank C Arricale II

FRANK C. ARRICALE, II
Executive Director

FCA:MCJ:rk

CC: Mr. Irwin Fleischner, Principal
Mrs. Bertha Gordon, Assistant Superintendent

LAW DEPARTMENT

Exhibit G

EXHIBIT H ANNEXED TO AFFIDAVIT
LETTER FROM ARRICALE II DATED 11/20/74

THE BOARD OF EDUCATION
OF THE CITY SCHOOL DISTRICT OF NEW YORK
DIVISION OF PERSONNEL
65 COURT STREET
BROOKLYN, N.Y. 11201

FRANK C. ARRICALE, II
EXECUTIVE DIRECTOR

866-6121/22/23

December 20, 1974

Mr. Robert Grant
55 West 92 Street
New York, N.Y. 10025

Dear Mr. Grant:

The School Medical Director has submitted a report which contains the following recommendation:

"Health leave to February 1, 1975 and possibly to June 30, 1975. He will be re-examined prior to return to duty."

Accordingly you are on leave of absence effective immediately.

Very truly yours,

Frank C Arricale

FRANK C. ARRICALE, II
Executive Director

FCA:MCJ:rk
CC: Mr. Irwin Fleishner, Principal
Mrs. B. Gordon, Assistant Superintendent

'75 APR 14 FP 1 59
LAW DEPARTMENT

EXHIBIT H

EXHIBIT I ANNEXED TO AFFIDAVIT
REQUEST FOR EXAMINATION

(1)

BOARD OF EDUCATION OF THE CITY OF NEW YORK
Office of Personnel
Medical Division
65 Court Street
Brooklyn, N.Y. 11201

Phone: 596-6050-1-2

Date JANUARY 13, 1975

Dear Sir/Madam:

Will you kindly appear at my office , Room 201, on _____ MONDAY . JANUARY. 27, 1975 _____, between 1:30 and 3:00 p.m. for examination in connection with your fitness to return to duty. Thank you.

Very truly yours,
Sidney Leibowitz

Sidney Leibowitz, M.D.
School Medical Director

ROBERT GRANT
55 w. 92nd ST
NEW. YORK . N.Y.10025

SL:ed tm.

EXHIBIT I

EXHIBIT J ANNEXED TO AFFIDAVIT
PHYSICIAN'S HANDWRITTEN REPORT

THE CITY SCHOOL DISTRICT OF NEW YORK
OFFICE OF PERSONNEL – MEDICAL DIVISION

MEDICAL DIVISION
JAN 27 1 33 PM '75
BOARD OF EDUCATION
CITY OF NEW YORK

NAME: Grant, Robert DATE:
ADDRESS: 55 W. 92nd St N.Y.C. 10025
SCHOOL: J. Monroe HS - X BORN: 2/23/29 APPOINTED:
EXAM. FOR: RBR
FILE NO. 367-793 SOCIAL SECURITY NO.
DIAGNOSIS:
ABSENT SINCE: EXPECTS TO RETURN: RETURNED:
DATE OF ACCIDENT: ABSENCE:

PHYSICAL EXAMINATION
HEIGHT & WEIGHT: 6 3 148 lb HEART, PULSE:
VISION W.O.G.-R W.G.-R
" " " " L " " L BLOOD PRESSURE:
EARS, HEARING: NOSE, THROAT
EXTREMITIES: THYROID:
LUNGS: ABDOMEN:
OTHER DEFECTS: see below

HISTORY AND FINDINGS:
45 male teacher of 14 yrs service has been on a recommended leave by this dept since Jan 2, 1975 to date. He wishes to return to his job as teacher on assignment at 110 Livingston Street. He states that he feels much better since his rest & his new apartment. He had had trouble with his neighbors before which he claims contributed to his offensive bastonie

(CONTINUE ON REVERSE SIDE IF NECESSARY)

DIAGNOSIS:
Agitated State
c paranoid features

RECOMMENDATION:
second
FMD report
panel psych
[illegible] 1/27/75

COMMENTS:

EXHIBIT J ANNEXED TO AFFIDAVIT
PHYSICIAN'S HANDWRITTEN REPORT

HISTORY AND FINDINGS (Continued)

difficulty. He no longer has the headaches but he refuses to submit a medical report regarding his treatment to date. This apparently upsetted him so that he became excessively talkative, + threatening litigation. He tells me I'm not a psychiatrist + have no right to requests reports. The logic of this is difficult to understand. As far as I can see he remains highly volatile when questioned about his headaches and anxieties so that he loses control of his rage. When asked to divest he insisted that he be examined by another doctor. His requests were granted + he was referred to second examiner.

This teacher continues to extremely hostile and threatening. He behaves in an unreasonable manner and accuses the Board of harassing him. In view of this instability, I recommend second panel psych and FMC report.

EXHIBIT J ANNEXED TO AFFIDAVIT
PHYSICIAN'S HANDWRITTEN REPORT

MEDICAL DIVISION
BOARD OF EDUCATION
PERSONNEL DIVISION
ROOM 202

MEDICAL EXAMINATION CONTINUATION SHEET

Date 1/23/75

Name of Examinee Grant

Address

School (or Bureau) and Boro

Exam For

Above noted

Px - BP 130/80 - Heart - neg. Lungs - clear. Thyroid, Abd - neg. Appears flushed.

Mr. Grant is on H/L. The headaches which caused absences in Oct-Nov 74 have stopped since moving (Nov. 15). There had been ~~[illegible]~~ a Tremendous amount of noise in his apt from the apt above him, causing Tension + lack of sleep. He feels fine now - Headaches are gone.

Mr. Grant is still very tense, c̄ flat affect. He did not elaborate when I asked why he had been assigned to 110 Livingston Street. He also had evaded this question when I examined him 12/9/74.

He wishes to go back to his job at the Bd (110 Livingston) saying that the job was alright. Because he appears upset + Tense + feel that he should be evaluated by a Panel Psychiatrist. He accepted the request slip for his doctor although he feel it was not necessary since his headaches are gone + he feels well Cyp. Anxiety State

Rec. Panel Psychiatrist

[illegible]

1/23/75

EXHIBIT K ANNEXED TO AFFIDAVIT
MEMORANDUM TO PANEL SPECIALIST

THE CITY SCHOOL DISTRICT OF NEW YORK
OFFICE OF PERSONNEL - MEDICAL DIVISION
65 COURT STREET
BROOKLYN, N.Y. 11201

MEMORANDUM TO PANEL SPECIALIST

ROOM 201 Tel. 596-6050-1-2

February 3, 1975

Dr. Percy Mason
37 East 67 Street
New York, NY 10021

Dear Dr. Mason:

Re: Robert Grant
55 West 92 Street
New York, NY
License English M.C. and J.M.C.

Arrangements have been made through your office to examine the above captioned on THURSDAY, FEBRUARY 13, 1975 at 2:40 P.M.

Enclosed, herewith is our medical file on this case.

I shall appreciate your returning our file with your bill and report.

Sincerely yours,

[redacted]
Arthur A. Maroff, M.D.
[redacted]
Interim Acting [redacted] Medical Director

SL:
Enc. Our Medical File

02-424-MED

EXHIBIT K

EXHIBIT L ANNEXED TO AFFIDAVIT
LETTER FROM PERCY MASON, M.D.
DATED 4/23/75

PERCY MASON, M. D.
37 EAST 67TH STREET
NEW YORK, N. Y. 10021
RHINELANDER 4-7111

April 23,1975

Arthur A. Nareff, M.D.
School Medical Director
Board of Education
Brooklyn, N.Y.

Re: Mr. Robert Grant
55 W. 92 St.,NYC.

Dear Doctor Nareff,

Mr. Grant was scheduled to be examined by me on February 13,1975. The preceeding evening- his attorney, a Mr. Dennis Krieger (tel.532-2211 called me to tell me that Mr. Grant would not keep his appointment with me and that he plans to institute legal action against the Board of Education. I did not inquire about the details. I notified you by telephone of the above on February 13,1975. I have not heard since then either from Mr. Grant or Mr. Krieger.

Sincerely yours,

Percy Mason, M.D.

AFFIDAVIT OF THOMAS C. GREBLE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
----------x

ROBERT GRANT,

Petitioner,

-against-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II., EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

----------x

75 Civ. 1676

AFFIDAVIT

Judge Pierce

THOMAS C. GREBLE, being duly sworn, deposes and says:

1. I am an Assistant Corporation Counsel duly admitted to the Bar of this Court. I have been assigned to the defense of the above entitled action and am fully familiar with the facts and circumstances hereinafter set forth.

2. This affidavit is submitted in opposition to plaintiff's motion for summary judgment as to "Causes of Action I, II, IV and V, and in support of defendants' cross-motion for summary judgment in their favor with respect to plaintiff's Causes of Action I, II, III, IV and V.

3. The grounds for the cross-motion for summary judgment will be specifically set forth below in connection with each Cause of Action. Defendants submit however that in addition to the specific grounds for each cause of action, the entire action is premature and speculative due to plaintiff's failure to exhause his available administrative remedies.

Failure to Exhaust Administrative Remedies

4. As the accompanying affidavit of Dr. Pool demonstrates, plaintiff has failed to appear for examination by a medical consultant of the Board of Education (Pool Affidavit, para. 18; Exhibit L annexed thereto). Thus it is

clear that this action is premature, for no final determination as to plaintiff's health has been rendered.

5. In addition, should plaintiff appear and be diagnosed as unfit for duty by the consulting doctor, plaintiff would still have available administrative review procedures. Plaintiff, a tenured teacher, is entitled to invoke his rights under Article IV F. (21) of the Agreement between the Board of Education and the United Federation of Teachers, a copy of which section is annexed hereto and marked Exhibit 1.

6. In substance, that section provides that when a tenured teacher is marked medically not fit to teach and placed on health leave without pay for thirty days (among other things), he is entitled to invoke an Ad Hoc Committee of Physicians to review his case. The Committee is composed of a Medical Division representative, plaintiff's doctor and a third physician selected by the other two. Each of these doctors separately examines the teacher and each renders a separate opinion concerning the teacher's fitness to teach.

7. If the consensus opinion of these doctors is adverse to the teacher, he has the right to appeal to a Chancellor's Committee on Disabled Teachers, pursuant to Section 105(a)(2) of the By-Laws of the Board of Education. A copy of this By-Law is annexed hereto and marked Exhibit 2.

8. That section provides a hearing before a Committee of three impartial and experienced educators who have no prior knowledge of the facts. They render an opinion, relying on their experience and educational expertise, concerning the ability of the teacher to function in a classroom setting in the context of the medical information before them. Neither the Board nor the teacher is

represented by counsel, although the teacher has the right to appear at this hearing and to be accompanied by a Union or other representative. The proceedings are recorded on tape. The teacher may submit medical reports at any time prior to or at the Committee on Disabled Teachers hearing which are considered and evaluated. Indeed, the teacher's own physician is a member of the Ad Hoc Committee, and his report is before the Committee on Disabled Teachers.

9. It is clear from the foregoing that the instant action is premature and speculative insofar as no final medical determination has been rendered due to plaintiff's refusal to consent to an examination. Moreover, the three step medical review procedure was carefully developed by the Union and the Board to insure that teachers have complete freedom from arbitrary medical decisions by the Board. It should be noted that petitioner complains that he has been denied the Ad Hoc Review Procedure (Complaint, para. 45) and your deponent submits that petitioner should be compelled to proceed in this fashion prior to litigating the constitutional questions.

Plaintiff's First Cause of Action

10. In essence, plaintiff's first cause of action is that defendants' failed to follow §2568 of the New York State Education Law. Plaintiff misconstrues the law, because §2568 does not apply to this action. That section permits a principal to request that teachers be examined to determine their continued fitness to teach. In the case at bar, plaintiff's principal gave him an unsatisfactory rating which prompted his transfer to non-pedagogical duties (Pool Affidavit, paras. 4-5 ; Exhibits A and B annexed thereto).

11. While serving as a clerk, plaintiff was absent for illness numerous times and he was examined by

the Board of Education Medical Division to determine if those absences were proper. (Pool Affidavit, paras. 6 and 7). It was his appearance at his examination and his excessive absenteeism due to illness which induced the Medical Division to conduct further examinations and to refer him to a psychiatrist for possible personality disorders. (Pool Affidavit, paras. 14-15).

12. §2568 is in no way pertinent to plaintiff's action, the request that he appear for examination was initiated by his own request for health leave, not his principal's. (Pool Affidavit, para. 6).

Plaintiff's Second Cause of Action

13. In his second cause of action, plaintiff alleges that the defendants failed to comply with Article IV(F)(4) of the Collective Bargaining Agreement between the United Federation of Teachers and the Board. That provision, quoted in paragraph 36 of the complaint, simply provides that when a principal requests that a teacher be examined pursuant to §2568, the teacher must be sent a copy of the report which forms the basis for the request. Since §2568 and the procedure thereunder does not apply to the case at bar, a fortiori, the contractual provision keyed into that section is also inapplicable.

Plaintiff's Third Cause of Action

14 With respect to plaintiff's third cause of action, he apparently claims that the defendants have conspired to "wilfully conceal" the possible consequences of medical examinations. As the Pool Affidavit and exhibits annexed thereto indicate (para. 6 and Exhibit D), the December 6, 1974 notice for examination was "in connection with absence" and had been triggered by plaintiff's application for sick leave, dated November 26, 1974. (Pool Affidavit, Exhibit C).

15. It was due to plaintiff's medical condition at the time of the December 10, 1974 examination which resulted in his being placed on health leave of absence. (Poo) Affidavit, para. 8). There was no way the Board could have known of his medical condition until the December 10 examination, and hence his charge that that is specious was a "conspire" to "conceal" the potential ramifications/

16. It should also be noted that all of the cases contained in the "Third Cause of Action" are inapposite, because no finding of medical disability has yet been rendered in this case, whereas in the cases plaintiff relies upon the actions were commenced after final administrative determinations had been rendered.

Plaintiff's Fourth Cause of Action

17. The linchpin of plaintiff's "Fourth Cause of Action, In Tort" is apparently that he has been denied his right to the ad hoc committee and a hearing prior to being placed on medical leave from December 20, 1974 to January 17, 1975. Since this medical leave was less than thirty days, during which time plaintiff could have used his accumulated sick leave to remain on the payroll, the ad hoc review committee was not available under the union contract. See Article IV F. 21 (para. 2), annexed hereto.

18. In any event, plaintiff was re-examined in January of 1975 and was continued on health leave pending a psychiatric examination. Had plaintiff complied with this request, the entire administrative review process described supra in paras. 5-8 - would have become operative. Your deponent submits that plaintiff should not be permitted to now benefit from his refusal to comply with the Board's reasonable and proper request that he be examined to determine whether he was fit to return to teaching.

AFFIDAVIT OF THOMAS C. GREBLE

Plaintiff's Fifth Cause of Action

19. Plaintiff's claim to "compensatory damages of $500,000" is totally frivolous. As the Pool Affidavit and Exhibits thereto indicate, the defendants at all times were acting in good faith, properly, and in accordance with applicable provisions of law and of the contract. The rendering of a final determination with respect to plaintiff's medical condition has been stymied by his refusal to be examined by a psychiatrist. Consequently, this cause of action is devoid of merit.

WHEREFORE, plaintiff's motion for partial summary judgment should be denied and defendants' cross-motion for summary judgment granted in all respects.

Thomas C. Greble

THOMAS C. GREBLE

Sworn to before me this
3rd day of October, 1975.

REUBEN DAVID, Notary Public
State of New York, No. 31-5927370
Qualified in New York County
Commission Expires March 30, 1976

Reuben David

EXHIBIT 1 ANNEXED TO AFFIDAVIT
MEDICAL REPORT AND REVIEW

21. Medical Report and Review

The report of the medical division on a teacher who was called for medical examination shall, upon written request of the teacher, be sent to the teacher's physician.

A regular teacher shall have the right to an independent evaluation by an ad hoc committee of physicians if the finding of the medical division to the Chancellor has resulted in: (1) placement of the teacher on a leave of absence without pay for more than three months, or (2) termination of the teacher's services, or (3) a recommendation for disability retirement.

A request for an independent evaluation of the finding of the medical division shall be submitted in writing by the teacher to the Office of Personnel within five school days of receipt of notice from the Office of Personnel that he has been placed on leave of absence or that his services have been terminated, or that he has been recommended for disability retirement.

The ad hoc committee shall consist of one physician selected by the teacher, one physician selected by the Board of Education, and a third physician selected by the other two physicians.

The findings of the ad hoc committee shall be reduced to writing and submitted to the Chancellor as an advisory opinion.

The fee of the third physician will be shared equally by the teacher and the Board of Education.

Failure by the teacher to select a physician within 30 days of the receipt of notice from the medical division to do so, shall be deemed a withdrawal of the teacher's request for an independent evaluation.

EXHIBIT 1

EXHIBIT 2 ANNEXED TO AFFIDAVIT BY-LAW § 105(a)

By-Law §105(a)

2. Any person in the employ of the Board of Education who is summoned to appear before the Superintendent of Schools, any person or a committee designated by him, for the determination of such person's ability to render continuous and efficient service as based on medical reports, shall receive written notice of the time and place of the meeting, mailed to the person so summoned, addressed either to the school or to his last-known post office address, specifying the matter to be considered, at least one week before the date specified for the said meeting. The notice shall inform the said person that he is to appear in person, and, if he so elects, may be accompanied and advised by an employee of the Board of Education, and intorduce any relevant evidence. The attendance of such adviser shall not be deemed absence from official duty, but such persons shall not absent themselves from school duty, except pursuant to such rules as the Superintendent of Schools shall prescribe. No person shall serve as an adviser in more than two matters in a school year within the provisions of this Section. No person in the employ of the Board of Education shall request or accept directly or indirectly any remuneration or other consideration for service as adviser.

EXHIBIT 2

ORDER OF PIERCE, J. DATED 3/30/76

DJR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DISTRICT COURT FILED APR 01 1976 S.D.OF N.Y.

ROBERT GRANT,

Plaintiff,

- v -

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

75 Civ. 1676 L.M.F.

MICROFILM APR 1976

ORDER

There are at present four matters pending before the Court in this action.

1. The defendant has moved for an order pursuant to Rule 35, Fed.R.Civ.P., requiring plaintiff to appear for a psychiatric examination.

2. The plaintiff has moved for a protective order to prevent the defendant from conducting such an examination and for dismissal of the defendant's Rule 35 motion.

3. The plaintiff has resubmitted his motion for summary judgment on the merits of the action.

ORDER OF PIERCE, J. DATED 3/30/76

4. The defendants have cross-moved for summary judgment on the merits and for dismissal of this action on the grounds that the plaintiff failed to exhaust available administrative remedies before bringing this action in federal court under 42 U.S.C. 1983.

The rule is clear in this Circuit that before a plaintiff may bring an action under Section 1983, he must exhaust available administrative remedies. See Plano v. Baker, 504 F.2d 595 (2d Cir. 1974); Blanton v. State University of New York, 489 F.2d 377 (2d Cir. 1973); Eisen v. Eastman, 421 F.2d 560 (2d Cir.), cert. denied, 400 U.S. 841 (1970). This rule embodies within itself the exception that administrative remedies are not "available" if it can be shown that they are inadequate or that resort to them would be futile. See Plano v. Baker, supra; Eisen v. Eastman, supra.

Here, the plaintiff has yet to respond to the defendants' claim that he has failed to exhaust the administrative remedies set forth in the defendants' moving papers. In other words, he has yet to assert to this Court that he has in fact exhausted the remedies

ORDER OF PIERCE, J. DATED 3/30/76

available or to attempt to demonstrate that any such effort on his part would be futile. Accordingly, he has yet to establish that he has a right to be in federal court with this dispute which involves a peculiarly local matter--internal procedures within a city school system--about which the Board of Education and the Union which represents the plaintiff have established detailed procedures.

The question of whether the plaintiff has exhausted his available administrative remedies must be addressed before any decision can be reached on the merits of this law suit. Accordingly, the plaintiff is directed to respond, within 30 days, to so much of the defendants' motion to dismiss (entitled a cross-motion for summary judgment) as raises this issue. Plaintiff is not to respond to the defendants' claims with respect to the merits of the action. If the plaintiff's response is not received within the time specified, the defendants' motion will be granted on default.

The defendants' motion pursuant to Rule 35 is denied at this time pending resolution of the exhaustion

ORDER OF PIERCE, J. DATED 3/30/76

question, without prejudice to renewal at a later time. Since this ruling makes the plaintiff's motion for a protective order moot, that motion is denied on that basis.

SO ORDERED.

Dated: New York, New York
March 30, 1976

LAWRENCE W. PIERCE
U. S. D. J.

OPINION AND ORDER OF PIERCE, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT GRANT,

Plaintiff,

- v -

75 Civ. 1676

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

----------x

APPEARANCES:

ROBERT GRANT
Sloan House
YMCA
356 West 56 Street
New York, New York 10001

Plaintiff, Pro Se

W. BERNARD RICHLAND, ESQ.
By CARMELA ACKMAN, ESQ.
Corporation Counsel
Municipal Building
New York, New York 10007

LAWRENCE W. PIERCE, District Judge

OPINION AND ORDER

Robert Grant (Grant), formerly employed as a tenured high school teacher by the defendant Board of

OPINION AND ORDER OF PIERCE, J.

Education of the City of New York (Board), [illegible] this civil action charging that he was denied due process of law in the manner in which he was placed on medical leave of December of 1974. Besides the Board of Education, Irving Anker (Anker), Chancellor of the defendant Board, and Frank C. Arricale, II (Arricale), Executive Director of the Board's Division of Personnel have been named as defendants.

Grant has asserted that the action, which seeks a declaratory judgment, damages and various equitable relief, is brought under 42 U.S.C. §§1983 and 1985(3). Jurisdiction lies pursuant to 28 U.S.C. §1343.

The facts of this case, as alleged in the complaint, can be stated briefly. During the fall of 1974, while Grant was serving on assignment at the central headquarters of the defendant Board, he was absent on a number of occasions. On or about December 6, 1974, Grant was sent a notice from the Medical Division of the Board requesting him to appear for a physical examination on December 13, 1974 "in connection with absence."

At about the same time, Grant had retained counsel to aid him in recovering paychecks which had been withheld during the periods of his absence. He alleges that he was

informed by the Board through his counsel that processing of the checks due to him would be expedited if he would appear for the informal physical examination which had been requested.

Grant alleges that he appeared for the scheduled physical examination on December 10, 1974.[1/] Subsequently, on or about December 16, 1974 he received checks from the Board for the days of absence in question. At the same time, he received another notice requesting him to appear for another physical examination on January 6, 1975 "in connection with [his] fitness to return to duty." This notice was followed by a letter from Arricale, dated December 20, 1974, which stated that the School Medical Director had recommended in a report that Grant be placed on Health leave to at least February 1, 1975 and possibly to June 30, 1975 and that he be re-examined prior to return to duty. Grant never received a copy of the report referred to in Arricale's letter.

When Grant returned to work on January 2, 1975 following the Christmas recess, he was informed that he was listed as having been on medical leave since December 20, 1974. When Grant protested to the Board

employee who so informed him that he had never received notification that the recommendation to which Arricale had referred in his letter had been accepted, the employee allegedly left and returned about thirty minutes later with another letter from Arricale, also dated December 20, 1974. This letter was identical to the previous letter except that it had added to it the statement that Grant was in fact placed on leave of absence effective immediately. Grant alleges, on information and belief, that this second letter was prepared on January 2, 1975 and backdated to December 20, 1974.

Grant received a further request dated January 17, 1975 to report for another medical examination which he did on January 27, 1975 at which time he provided the defendants with a report from his own physician stating that he was in good health. At that examination, Grant was asked to have his physician supply a report concerning "treatment of the case." No further specification was given as to the information being sought. Grant alleges this was all part of a program of harrassment.

Finally, on February 3, 1975, Arricale stated in a letter to one Michael Reboli that Grant had been placed on health leave to February 1, 1975, that he was

subject to further examination to determine his fitness for duty after that date, that additional medical analysis was underway, and that Grant was to remain on health leave on the basis of the medical findings to that date. On or about that same date, Grant received a letter from the Meidcal Division of the Board requesting that he report for a psychiatric examination on February 13, 1975. On April 7, 1975, Grant filed the instant action.

Grant's pro se complaint is drafted in terms of five separate causes of action. Upon examination, however, it becomes apparent that he has one essential complaint which is that on or about December 20, 1974, he was unlawfully and improperly placed on medical leave by the defendants. Grant alleges that in placing him on medical leave in the manner which they did, the defendants deprived him of his rights under the New York State Education Law §2508 [2/] and under Article IV, F, 4 [3/] of the union contract governing his employment, thereby depriving him of his right to work as a teacher, without due process of law.

Grant's specific allegations against the defendants appear to center around his contention that the true purpose of the December 6, 1974 notice and the

December 9, 1974 physical examination was not to examine him with regard to his earlier absences, but rather to make a determination concerning his fitness to teach. Grant charges that by concealing the true purpose of the examination the defendants were able to circumvent the provisions of §2568 of the Education Law which states that a person employed by the Board may be required to appear for a medical examination to determine his capacity to teach only when such a procedure is recommended in a written report by a person under whom such person is employed and that the person to be examined may be accompanied by a physician or other person of his choosing. Grant claims further, that none of the notices which he received requesting that he appear for medical examinations were accompanied by copies of requests from his superiors that he be required to undergo examination as he asserts is required by Article IV, F, 4 of the union contract in effect at the time. Grant claims, finally, that as a result of the defendants' actions in willfully concealing from him the true nature and potential effect of the December 9, 1974 examination, the defendants were able to place him on medical leave without giving him the right, said to be

derived from the union contract[4/], to be examined by an independent committee of physicians.

By this action, Grant seeks a declaratory judgment and other relief annulling the action of the defendants placing Grant on medical leave of absence without pay effective December 20, 1974 reinstating him to his job, awarding him back pay with interest and credit toward retirement from December 16, 1974 to the present, and awarding him actual and punitive damages in the amount of $1,865,000. The defendants have moved to dismiss the complaint on the ground that the plaintiff failed to exhaust available administrative remedies, or, in the alternative, for summary judgment on the merits. The plaintiff has also moved for summary judgment.

The proposition that a plaintiff in a civil rights action may be required to exhaust state administrative remedies has continued to survive in this circuit. See, e.g., Gonzalez v. Shanker, 533 F.2d 832 (2d Cir. 1976). It is subject, however, to a number of exceptions. In considering the issue, the Court of Appeals recently noted that among these exceptions are cases where administrative remedies are inadequate. Id. at 834. See Plano v. Baker,

504 F.2d 595, 597 (2d Cir. 1974); Ray v. Fritz, 468 F.2d 586 (2d Cir. 1972) (per curiam). The Court has also stated that "before a district court may relinquish its civil right jurisdiction, 'it must . . . be positively assured -- it may not presume -- that there are speedy, sufficient and readily available administrative remedies open to pursue . . .' Morgan v. LaValle, 526 F.2d 221, 224 (2d Cir. 1975)." Gonzalez v. Shanker, supra at 834.

The defendants assert that the plaintiff has failed to avail himself of three stages of administrative review. First the defendants have submitted evidence which shows that Grant failed to appear on February 13, 1975 for the scheduled examination by the panel psychiatrist selected by the Board, as requested in the Board's letter to Grant dated February 3, 1975.

Second, the defendants point out that if Grant were to appear and be diagnosed as unfit for duty by the consulting doctor, he would be entitled, as a tenured teacher, to invoke his rights of review Under Article IV, F, 21 of the union contract. In substance, that section provides that when a tenured teacher is marked medically unfit to teach and (among other things) placed on health leave for thirty days, the teacher is entitled to review

of his case by an Ad Hoc Committee of Physicians. The Committee is composed of a representative of the Board's Medical Division, the teacher's physician, and a third physician selected by the other two. The findings of the Committee are submitted to the Chancellor in writing as an advisory opinion.

Finally, argue the defendants, the teacher has the right to a hearing before the Chancellor's Committee on Disabled Teachers, a Committee of three impartial educators with no previous knowledge of the facts. At this hearing the teacher has the right to be accompanied by a representative though not an attorney, to submit medical reports and to introduce other relevant evidence.

The defendants assert that by refusing to consent to an examination by the consulting psychiatrist or to follow through with the succeeding procedures, if necessary, the plaintiff has failed to exhaust readily available, carefully developed administrative procedures which he should be required to pursue before bringing this litigation in federal court. They also emphasize their contention that no final determination has yet been made concerning Grant's fitness to teach; thus, the action is premature. For the reasons which follow, the Court does not agree.

The defendants' arguments on exhaustion are based on a fundamental misperception of the nature of the plaintiff's complaint. The remedies which they would have the plaintiff pursue are all directed to reviewing the determination, already made -- at least on an interim basis -- that Grant was not fit for duty. But, the essence of Grant's complaint is not that he was improperly determined to be unfit to teach. Rather, he charges that the question of his fitness was not properly raised in the first place in that no request was ever made by his superior that he be examined with regard to his fitness, as provided for by §2568 of the Education Law, and that he was deprived of right contained in that section which he would have exercised at the initial examination had he known that the issue of his fitness would be raised. Defendants have suggested no administrative proceedings by means of which Grant should have proceeded to raise that issue.

Even if the administrative procedures set forth by the defendants were addressed to the issues raised in plaintiff's complaint, the defendants' exhaustion argument would still fail. In Gonzalez v. Shanker, supra the Court of Appeals affirmed the finding of the district judge that

the plaintiff, a junior high school principal, did not have to exhaust administrative remedies available to him under the New York Education Law and the union contract governing his employment. Among other reasons for this conclusion, the Court noted that the procedures accorded him were informal in nature, that he did not have the right to be represented by counsel, and that, because he was seeking damages, the administrative bodies did not have the power to award the relief sought. See id. at 837-38. Each of these points applies equally to the instant case. For the reasons stated, the defendants' motion to dismiss the complaint for failure to exhaust administrative remedies is denied.

As previously noted, the gravamen of plaintiff's complaint is that he was placed on medical leave following a determination that he was not fit for duty, although the issue of his fitness was not properly raised and despite the fact that he was denied procedural rights accorded him by section 2568 of the Education Law. The defendants' motion for summary judgment is based on the assertion that none of the procedural rights Grant claims he was denied were applicable to his case.

The defendants' motion is supported by the

affidavit of Dr. Yvonne de Sola Pool (Pool), Assistant Medical Director of the Medical Division of the Board of Education, and numerous documents related to the series of physical examinations about which Grant has complained. The evidence shows that from October 17, 1974 through November 12, 1974 plaintiff was absent fourteen of twenty working days and that he applied for sick leave for those days. Dr. Pool asserts that the reason the plaintiff was sent the December 6, 1974 notice was "to determine the degree of disability resulting from his illness on these dates." She further asserts that the examination revealed that Grant's absences had been due to valid medical reasons. As Grant himself noted in his complaint, checks for those days were issued by the Board of Education.

The defendants claim that the December 9, 1974 examination was the result of the plaintiff's own request for sick leave for the days for which he had been absent, not any request from his supervisor that he be examined. Thus, they claim §2568 is not applicable. They further assert that until the first medical examination the Board had no knowledge of Grant's medical condition and thus, his claim that the hidden purpose of the initial examination

was to determine his fitness for duty has no merit.

The evidence submitted by the defendants does appear to establish that the intended purpose of the initial physical examination was to determine whether Grant's absences had been for valid medical reasons and that the examination was held as a result of Grant's own request for sick pay for the days of absence. Grant has submitted no evidence which would establish his contention to the contrary.[5/] The Court does not consider this controlling, however, for the evidence submitted by the defendants themselves makes it absolutely clear that once Grant was summoned for a medical examination, that examination was in fact used not only for the purpose asserted by the defendants, but also to make a determination of his fitness for duty.

Dr. Pool states in her affidavit that as a result of the December 9, 1974, The Medical Division found plaintiff not fit to return to duty. The report of the Medical Director states that "He [Grant] is obviously unfit for duty" and recommends that he be placed on health leave to February 1, 1975 with a reexamination prior to return to duty. It was this report which was the basis for Arricale's actions placing Grant on medical leave. And,

It is apparent that all the subsequent examinations, up to and including the proposed psychiatric examination on February 13, 1975 to which Grant refused to submit, were directed to the sole issue of Grant's fitness to return to his duties. Thus, whatever was the intended purpose of the December 6, 1974 notice and the December 9, 1974 examination, it is apparent to this Court that the examination was used to determine Grant's fitness for duty. That examination, and all those subsequent, were not initiated by a report from Grant's supervisor, as required by §2568. Nor was Grant given an opportunity to be accompanied to the examination by his own physician or another person of his choice as permitted by that section.

This Court finds no basis in the Education Law or the union contract for allowing the defendants to circumvent these procedures which apply when a teacher is examined to determine his fitness for duty, simply because there is some other expressed purpose for the examination. [6/] The Court can come to no other conclusion that that, however, unintentionally, Grant was denied the benefit of these procedures and as a consequence was denied due process of law in the way in which he was placed on medical leave. In this Court's view, the submissions of the defendants

themselves leave no question of fact with respect to the matter. Accordingly, the plaintiff is entitled to summary judgment with respect to his claim that he was wrongfully and improperly placed on medical leave without due process of law.

Before considering the relief to be granted, there are some matters to be discussed which have not been raised by the defendants, but which go to this Court's jurisdiction over certain of the plaintiff's claims and certain of the defendants and which may therefore properly be raised by the Court on its own motion. (1) Plaintiff purports to sue under 42 U.S.C. §1985(3) as well as under §1983. However, the complaint contains no allegations of an invidious class-based discriminatory animus such as is required to state a cause of action under §1985(3). See, e.g., Griffin v. Breckenridge, 403 U.S. 88 (1971). Accordingly, the complaint is dismissed insofar as it purports to be brought under 42 U.S.C. §1985(3). (2) The Second Circuit has recently held that the Board of Education of the City of New York is not a "person" which can be sued under §1983. See Monell v. Department of Social Services of the City of New York, 532 F.2d 259, 264 (2d Cir. 1976). The complaint, insofar as it purports to

solely on §1983, must be dismissed in its entirety as to the defendant Board. (3) the doctrine of respondeat superior does not apply to actions for damages under §1983. Johnson v. Glick, 481 F.2d 1028, 1034 (2d Cir.), cert. denied, 414 U.S. 1033 (1973). Plaintiff's complaint alleges no personal involvement of the defendant Anker in the events at issue. Accordingly, insofar as the complaint seeks damages under §1983, it is dismissed against the defendant Anker.

In accordance with the discussion in this opinion, the defendants' motion to dismiss the complaint and for summary judgment is hereby denied. The plaintiff's motion for summary judgment is hereby granted on the issue of liability. Pursuant to 28 U.S.C. §2201, the Court hereby declares that the plaintiff was deprived of due process when he was placed on health leave, following a medical examination which determined his fitness for duty, without being notified of his right to have his own physician or another representative of his choosing present at the examination, as provided for in §2568 of the New York Education Law. Accordingly, that action was improper and in violation of law.

The Court hereby orders that the determination

that the plaintiff be placed on health leave as of December 20, 1974 be considered null and void; that the plaintiff be reinstated to the position he held at the time that determination was made; and that the plaintiff be given credit toward retirement for any time he has lost as a result of his having been placed on health leave as described herein.

Neither party has briefed the question of whether back pay or damages can properly be awarded in the context of this action. The Court notes that this pro se complaint could reasonable be construed as alleging jurisdiction under 28 U.S.C. §1331 and that as such, there is authority for awarding damages against defendants such as those here based on a cause of action derived directly from the Constitution. See Buck v. Board of Education, No. 71 Civ. 954 (E.D.N.Y. July 16, 1975) (unpublished opinion) and cases cited therein. However, Court makes no determination at this time with respect to the plaintiff's request for back pay and damages. Rather, the parties shall have 60 days from the date of this order to submit on this question -- including the question of whether or not an evidentiary hearing is required -- unless within that time period the parties

trial or discontinuance of this aspect of the case.

The Clerk of the Court is directed to prepare a partial judgment in accordance with this opinion and submit it to the Court for approval.

This action is referred again to Magistrate Raby, this time with the request that he confer with the parties within 45 days, if possible, regarding settlement of the remaining aspects of this case.

SO ORDERED.

Dated: New York, New York
August , 1976

LAWRENCE W. PIERCE
U. S. D. J.

FOOTNOTES:

1. Grant identifies the date on which the first examination was held as December 10, 1974. The evidence submitted by the defendants in connection with their motion for summary judgment indicates that the examination was in fact held on December 9, 1974. The Court will refer to the examination as the December 9, 1974 examination. There would appear to be no doubt, however, that all parties are referring to the same examination.

2. Section §2568 of the Education Law provides:

> The superintendent of schools of a city having a population of one million or more shall be empowered to require any person employed by the board of education of such city to submit to a medical examination by physician or school medical inspector of the board, in order to determine the mental or physical capacity of such person to perform his duties, whenever it has been recommended in a report in writing that such examination should be made. Such report to the superintendent may be made only by a person under whose supervision or direction the person recommended for such medical examination is employed.
>
> The person required to submit to such medical examination shall be entitled to be accompanied by a physician or other person of his own choice. The findings upon such examination shall be reported to the superintendent of schools and may be referred to and considered for the the evaluation of service of the person examined or for disability retirement.

3. Article IV, F, 4 of the union contract provides:

> "The report of the immediate supervisor requesting examination of a teacher pursuant to Education Law Section 2568 shall be made in duplicate. A copy of the report shall be forwarded to the teacher."

4. Article IV, F, 21 of the union contract provides:

> The report of the medical division on a teacher who was called for medical examination shall, upon written request of the teacher, be sent to the teacher's physician.
>
> A regular teacher shall have the right to an independent evaluation by an ad hoc committee of physicians if the finding of the medical division to the Chancellor has resulted in: (1) placement of the teacher on a leave of absence without pay for more than three months, or (2) termination of the teacher's services, or (3) a recommendation for disability retirement.
>
> The ad hoc committee shall consist of one physician selected by the teacher, one physician selected by the Board of Education, and a third physician selected by the other two physicians.
>
> The findings of the ad hoc committee shall be reduced to writing and submitted to the Chancellor as an advisory opinion.
>
> The fee of the third physician will be shared equally by the teacher and the Board of Education.
>
> Failure by the teacher to select a physician with 30 days of the receipt of notice from the medical division to do so, shall be deemed a withdrawal of the teacher's request for an independent evaluation.

5. Grant was directed, by order of this Court dated March 20, 1976, to submit only on the question of exhaustion of available remedies. In view of the Court's conclusion in this opinion that it does not matter what the original intention of the Board in directing him to appear for an examination was, the fact that he has submitted no evidence on the point is of no significance.

6. The defendants have offerred no other authority for requiring Grant to appear for an examination, but have argued only that §2568 does not apply here. The Court notes that under Education Law §913, a possible alternative basis for the examination, the teacher is given the same right as in §2568 to be accompanied at the examination by a physician or other representative of his choice.

7. Plaintiff's related claim that he was denied the Ad Hoc Committee review provided for in Article IV, F, 21 of the union contract is premature since that review is only applicable when a final determination has been made that a teacher is unfit for duty, which has not happened here.

PARTIAL JUDGMENT DATED 8/31/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT GRANT,

Plaintiff,

-v-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

75 Civ. 1576 (LWP)

PARTIAL JUDGMENT

Plaintiff having moved the Court for summary judgment, and defendants having cross-moved for summary judgment, pursuant to Rule 56, Fed.R.Civ.P., and the said motions having come on to be heard before the Honorable Lawrence W. Pierce, United States District Judge, and the Court having handed down its opinion granting plaintiff's motion as to certain defendants on the issue of liability only, and having dismissed the complaint as to the defendant BOARD OF EDUCATION, and having directed the Clerk to enter partial judgment thereon, and with the express determination that there is no just reason for delay of entry of this judgment, pursuant to Rule 54(b) Fed.R.Civ. P., it is hereby

ORDERED, ADJUDGED and DECREED: That plaintiff ROBERT GRANT have judgment against defendants IRVING ANKER and FRANK C. ARRICALE, II, as to liability only, upon plaintiff's claim brought pursuant to 42 U.S.C. § 1983, and it is further

ORDERED, ADJUDGED and DECREED: That defendant BOARD OF EDUCATION OF THE CITY OF NEW YORK have judgment against plaintiff ROBERT GRANT, dismissing the complaint as to said defendant only, and it is further

MICROFILM
SEP

PARTIAL JUDGMENT DATED 8/31/76

ORDERED: That the determination that the plaintiff ROBERT GRANT be placed on health leave as of December 20, 1974, be considered null and void, and it is further

ORDERED: That the plaintiff ROBERT GRANT be reinstated to the position he held at the time said determination was made; and that the plaintiff be given credit toward retirement for any time he has lost as a result of his having been placed on health leave as described above.

Dated: New York, N.Y.
August 31, 1976

APPROVED:

LAWRENCE W. PIERCE
U. S. D. J.

JUDGMENT ENTERED: - 9/3/76

Raymond F. Burghardt
CLERK

ORDER CORRECTING PARTIAL JUDGMENT - 3/1/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED MAR 3 1977 S.D. OF N.Y.

ROBERT GRANT,

Plaintiff,

- v -

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, and FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

75 Civ. 1676
(Pro Se)

ORDER CORRECTING PARTIAL JUDGMENT

This Court having by its order dated August 31, 1976 directed the entry of a Partial Judgment, and having directed by its Memorandum and Order dated February 28, 1977, that said Partial Judgment be corrected pursuant to Rule 60(b) Fed.R.Civ.P., it is hereby

ORDERED that the eighth line of the order of Partial Judgment dated August 31, 1976 is hereby deleted, and the following substituted in its stead: "only, and having dismissed the claims pursuant to 42 U.S.C. §§1983 and 1985 as to the defen-"; and it is further

ORDERED that the second decretal paragraph of the order of Partial Judgment dated August 31, 1976, is hereby deleted, and the following substituted in its stead:

"ORDERED, ADJUDGED AND DECREED that plaintiff's claims against the defendant BOARD OF EDUCATION brought pursuant to 42 U.S.C. §§1983 and 1985 are hereby dismissed as to said defendant only; and it is further

"ORDERED that the Court reserves decision on plaintiff's claims against the defendant BOARD OF EDUCATION brought pursuant to 28 U.S.C. §1331; and it is further"

and it is further

ORDER CORRECTING PARTIAL JUDGMENT - 3/1/77

ORDERED that a copy of this Corrected Partial Judgment be filed attached to the Order of Partial Judgment dated August 31, 1976.

Dated: New York, New York
March 1, 1977

LAWRENCE W. PIERCE
U. S. D. J.

JUDGMENT ENTERED: - 3/3/77

Raymond F. Burghardt
CLERK

ORDER OF PIERCE, J. DATED 1/31/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT GRANT,

Plaintiff,

- v -

BOARD OF EDUCATION, et al.,

Defendants.

75 Civ. 1676
(Pro Se)

ORDER

The Court has received defendant's memorandum of law on damages in the above matter and has more recently received a letter from the plaintiff which the Court hereby deems to be a reply memorandum.

In reviewing defendants' submission, the Court notes that defendants' present solely a legal argument; defendants have not submitted their calculation of the amount of back pay damages to which plaintiff may be entitled in view of the Court's previously announced decision that defendants Anker and Arricale are liable in connection with the federal question presented herein.

Accordingly, the Court directs that counsel for defendants submit an affidavit not later than February 11, 1977, detailing defendants' position as to the amount of damages

due to the plaintiff in the event liability in damages is found. Specifically, counsel shall address the question of the amount of back pay allegedly due, and the amount of back pay (if any) which has already been paid to plaintiff. In this regard, the Court wishes to note plaintiff's allegation that his annual salary was $19,700 and that he is due damages for the period between December 20, 1974 and September 30, 1976.

The Court also hereby rules that it will not entertain any application by plaintiff to amend the pleadings to include any exemplary damages claim. Nor will the Court award damages for any claims following plaintiff's October 1, 1976 reinstatement, since such matters are beyond the scope of the complaint. Finally, the Court once more suggests that the parties meet in a final attempt to settle the matter prior to a decision on the issue by the Court.

SO ORDERED.

Dated: New York, New York
January 31, 1977

LAWRENCE W. PIERCE
U. S. D. J.

MEMORANDUM AND ORDER, PIERCE, J. DATED 2/28/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT GRANT, :

Plaintiff, :

- v - : 75 Civ. 1676 (Pro Se)

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL, :

Defendants. :

----------x

APPEARANCES:

ROBERT GRANT
Hotel Belleclaire
250 West 77th Street
New York, New York 10024

Plaintiff, Pro Se

W. BERNARD RICHLAND, ESQ.
Corporation Counsel of the City of New York
(BY: ROBERT DEUTSCH, Assistant Corporation Counsel)
Municipal Building
New York, New York 10007

Attorney for Defendants.

LAWRENCE W. PIERCE, D.J.

MEMORANDUM AND ORDER

On August 11, 1976, this Court granted pro se plaintiff's motion for summary judgment and ordered Grant reinstated in his position with the defendant Board of Education. Since neither party at that time had addressed the issue of damages, this

Court reserved decision on damages and directed the parties to meet under the auspices of a magistrate in an attempt to settle the matter. On December 10, 1976, the Court received a Report from Magistrate Raby indicating that settlement negotiations had been in vain. Thereafter the parties' submissions on damages were received.

On January 31, 1977, this Court entered an order directing defendants to submit an affidavit detailing their calculation of the amount of damages the pro se plaintiff would be entitled to in the event liability was found. In that order the Court further denied plaintiff's application to amend the pleadings to include a claim for punitive damages, and ruled that no damages would be awarded for any matters occurring following October 1, 1976, the date of Grant's reinstatement.

In compliance with the January 31 order, defendants on February 15, 1977 filed an affidavit of an employee of the Board of Education, which affidavit set forth a calculation demonstrating that had plaintiff been employed during the period in question, he would have received a total salary of $35,698.24.

Thus, there is no question as to the amount of back pay involved. The only issue which need be addressed is whether the New York Board of Education can be held liable in damages for back pay in an action such as this one.

Having considered the matter, this Court chooses to adhere to its previously-announced view that the defendant

Board of Education is liable in damages pursuant to federal question jurisdiction, 28 U.S.C. §1331. This Court finds that there exists sufficient authority for such a holding, and it relies mainly upon the decision of Judge Judd in Buck v. Board of Education, 71 Civ. 954 (E.D.N.Y. July 16, 1975), and the cases cited therein. See also Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971); Brault v. Town of Milton, 527 F.2d 730, 735 (2d Cir.), vacated on other grounds, 527 F.2d at 741 (2d Cir. 1975) (en banc); Roane v. Callisburg Independent School District, 511 F.2d 633 (5th Cir. 1975); Skehan v. Board of Trustees, 405 F.2d 31 (3d Cir. 1975); Cardinale v. Washington Technical Institute, 500 F.2d 791 (D.C. Cir. 1974).

These cases establish that a federal court may have jurisdiction over, and award relief against, school boards and similar bodies under 28 U.S.C. §1331. While the Court recognizes defendants' argument that to allow such an action in this Court would be to create jurisdiction concurrent with the state courts, there are a series of factors which mitigate any such result. First, as noted by Judge Oakes in Brault, supra, jurisdiction pursuant to 28 U.S.C. §1331 is limited to cases such as this one where damages are in excess of $10,000. Thus, municipalities and their agencies still retain immunity under §1983 against damages claims for less than §1331's jurisdictional amount. Further, only constitutional claims are involved here, and to

abandon the prosecution of such claims solely to the state courts would be to abdicate the concurrent duty of the federal courts to protect constitutional rights. See Steffel v. Thompson, 415 U.S. 452, 473 (1974).

It is undisputed that a plaintiff such as Grant can obtain federal injunctive relief for violation of his constitutional rights; to require plaintiff to thereafter file a second action in state court for back pay damages would cause needless duplication of effort. Accordingly, having considered the question, the Court adheres to its view that the Board of Education is liable in damages under 28 U.S.C. §1331.

Defendant Anker and Arricale, of course, are not immune from suit under §1983. They have been found liable on plaintiff's motion for summary judgment, and defendants do not seek to reargue that question. Nor do defendants put forward any reason why Anker and Arricale should not be held to respond in damages.

Accordingly, there being no dispute as to the amount of back pay damages due the plaintifff, the Court hereby grants to plaintiff summary judgment on the issue of damages, and finds the defendants joint and severally liable for $35,698.24 plus interest at six per cent from October 1, 1976. Plaintiff shall also recover his costs.

There shall be prepared an appropriate order of final judgment in accordance herewith. The Court notes that the partial judgment dated August 31, 1976 erroneously dismissed the complaint in its entirety as against the Board of Education; as is apparent from this order and the decision dated August 11, 1976, that judgment should have dismissed plaintiff's §1983 claim against the Board but reserved decision on the question of liability under 28 U.S.C. §1331. Accordingly, pursuant to Rule 60(b) Fed.R.Civ.P., a corrected judgment shall be entered.

Judgment for plaintiff.

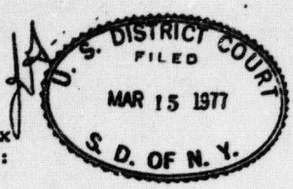
SO ORDERED.

Dated: February 28, 1977
New York, New York

LAWRENCE W. PIERCE
U. S. D. J.

ORDER OF PIERCE, J. DATED 3/11/77

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



ROBERT GRANT,

Plaintiff,

-v-

BOARD OF EDUCATION OF THE CITY OF NEW YORK, et al.,

Defendants.

75 Civ. 1676 - R.W.P.
(PRO SE)

ORDER

Pursuant to Rule 60(b), the text of the Court's Memorandum and Order dated February 28, 1977 is hereby amended as follows:

Page 4, l.13-18: Delete entire paragraph and substitute the following in its stead:

> "In its previous decision the Court dismissed the complaint as against defendant Anker but found defendant Arricale liable on plaintiff's §1983 claim. Defendant Arricale is not immune from suit under §1983. Defendants do not seek to reargue that finding of liability nor do they put forth any reason why Arricale should not be held to respond in damages."

Since an order of final judgment has already been entered herein, pursuant to Rule 60(b) Fed.R.Civ.P. that judgment which is erroneous, No. 77,341, should be and hereby is amended. An amended final judgment shall be entered forthwith.

(42)

A copy of this order should be filed attached to the Memorandum and Order dated February 28, 1977.

SO ORDERED.

Dated: New York, New York
March 11, 1977

LAWRENCE W. PIERCE
U. S. D. J.

ORDER AND FINAL JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT GRANT,

Plaintiff,

- v -

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, and FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

75 Civ. 1676
(Pro Se)

ORDER AND FINAL JUDGMENT

#

Plaintiff having moved the Court for summary judgment, and the Court having granted said motion in its decision dated August 11, 1976, and having directed that the plaintiff be reinstated, and having reserved decision on the issue of damages, and having directed that a partial judgment be entered pursuant to Rule 54(b) Fed.R.Civ.P., and the Court having signed an order of partial judgment on August 31, 1976, and a corrected order of partial judgment on March 1, 1977, and the parties having briefed the issue of damages and the Court having rendered its decision thereon dated February 28, 1977, and said decision having directed that judgment be entered for the plaintiff, it is hereby

ORDERED, ADJUDGED and DECREED, that plaintiff ROBERT GRANT have judgment against defendants IRVING ANKER and FRANK C. ARRICALE, II, pursuant to plaintiff's claims under 42 U.S.C. §1983, and against defendant BOARD OF EDUCATION OF THE CITY OF NEW YORK pursuant to plaintiff's claims under 28 U.S.C. §1331, for damages in the amount of $35,698.24 plus interest at six per cent from October 1, 1976, and it is further

ORDERED, ADJUDGED and DECREED, that plaintiff shall recover his costs, to be taxed by the clerk.

Dated: New York, New York
March 2, 1977

LAWRENCE W. PIERCE
U. S. D. J.

JUDGMENT ENTERED:

CLERK

ORDER AND AMENDED FINAL JUDGMENT APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED MAR 14 1977 S.D. OF N.Y.

ROBERT GRANT,

Plaintiff,

- v -

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, and FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

75 Civ. 1676 - L.B.P.
(PRO SE)

ORDER AND AMENDED FINAL JUDGMENT

77,372

Plaintiff having moved the Court for summary judgment, and the Court having granted said motion in its decision dated August 11, 1976, and having directed that the plaintiff be reinstated, and having reserved decision on the issue of damages, and having directed that a partial judgment be entered pursuant to Rule 54(b) Fed.R.Civ.P. and the Court having signed an order of partial judgment on August 31, 1976, and a corrected order of partial judgment on March 1, 1977, and the parties having briefed the issue of damages and the Court having rendered its decision thereon dated February 28, 1977, and said decision having directed that judgment be entered for the plaintiff, and the Court having signed an order of final judgment dated March 2, 1977, and said judgment having been entered as No. 77,340, and the Court having on March 11, 1977 ordered that the final judgment No. 77,340 be amended pursuant to Rule 60(b) Fed.R.Civ.P. and having directed that an amended final judgment be entered, it is hereby

ORDERED, that Judgment No. 77,340 heretofore entered is hereby amended; and it is further

ORDER AND AMENDED FINAL JUDGMENT APPEALED FROM

ORDERED, ADJUDGED and DECREED, that plaintiff ROBERT GRANT have judgment against defendant FRANK C. ARRICALE, II, pursuant to plaintiff's claims under 42 U.S.C. §1983, and against defendant BOARD OF EDUCATION OF THE CITY OF NEW YORK pursuant to plaintiff's claims under 28 U.S.C. §1331, for damages in the amount of $35,698.24 plus interest at six per cent from October 1, 1976; and it is further

ORDERED, ADJUDGED and DECREED, that defendant IRVING ANKER have judgment against the plaintiff dismissing the complaint in all respects as against IRVING ANKER only; and it is further

ORDERED, ADJUDGED and DECREED, that plaintiff ROBERT GRANT shall recover his costs, to be taxed by the clerk.

Dated: New York, New York
March 11, 1977

LAWRENCE W. PIERCE
U. S. D. J.

JUDGMENT ENTERED: - 3/15/77

Raymond F. Burghardt
CLERK

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT GRANT,

Plaintiff,

- v -

BOARD OF EDUCATION OF THE CITY OF NEW YORK, IRVING ANKER, CHANCELLOR, and FRANK C. ARRICALE, II, EXECUTIVE DIRECTOR, DIVISION OF PERSONNEL,

Defendants.

----------x

NOTICE OF APPEAL

75 Civ. 1676
(Lwp)

S I R S:

Notice is hereby given that the defendants hereby appeal to the UNITED STATES COURT OF APPEALS, for the Second circuit, from the order and final judgment entered herein on March 7, 1977, which awarded plaintiff damages in the sum of $35,698.24 against the BOARD OF EDUCATION on a claim arising under 28 U.S.C. 1331, and this appeal is taken from each and every part of said order as well as from the whole there of.

Dated: New York, N.Y.
March 18, 1977

Yours, etc.,

W. BERNARD RICHLAND
Corporation Counsel
of The City of New York
Attorney for Defendants
Office and P.O. Address
Municipal Building
New York, N.Y. 10007

By Stuart Adler
STUART ADLER

To: Robert Grant
Hotel Belleclaire
250 West 77th St.
New York, N.Y. 10024

ap 3/23/77

321-122-421040(53)

AFFIDAVIT OF SERVICE ON [redacted] OF PRINTED PAPERS

City, County and State of New York, ss.: Allan James

being duly sworn, says, that on the 21 day of JULY, 1977

at No. 250 W. 77th ST. in the Borough of MAN. in The City of New York, he served three copies

of the annexed JOINT APPENDIX upon ROBT. S. GRANT Esq.

~~the attorney for~~ the PLTFF-APPLEE 2ND-SE in the within entitled action by delivering

three copies of the same to a person in charge of said attorney's office during the absence of said attorney therefrom, and leaving the same with him.

Sworn to before me, this 21
day of JULY, 1977

Allan James

BRUCE S. GARNER
Commissioner of Deeds
City of New York - No. 4-1786
Commission Expires May 1, 1978

Bruce Garner